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Proposed Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-81
Regulation title	Regulations Governing Special Education Programs for Children with Disabilities in Virginia
Action title	Revisions to comply with the "Individuals with Disabilities Education Improvement Act of 2004" and its federal implementing regulations
Date this document prepared	August 30, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The present action proposes substantive changes in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. In a concurrent action, the Board of Education proposes to repeal the text of the current regulations (8 VAC 20-80) and promulgate new regulations (8 VAC 20-81). Substantive new changes are proposed for the following areas: 1) Functions of the Virginia Department of Education (VDOE); 2) Referral for evaluation; 3) Eligibility determinations; 4) The development, review and revision of a student's individualized education program (IEP); 5) Parentally-placed private school students; 6) Discipline; 7) Procedural safeguards, including the appointment of surrogate parents and dispute resolution 8) Local educational agency administration and governance; 9) Funding; and 10) The requirements regarding highly qualified personnel.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia*, at § 22.1-214, requires the Board of Education to “prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities” between the ages of two and twenty-one, inclusive. The program developed by the Board of Education must “be designed to ensure that all children with disabilities have available to them a free and appropriate education.” The *Code of Virginia*, at § 22.1-16, authorizes the Board of Education to “promulgate such regulations as may be necessary to carry out its powers and duties....”

When implementing a program of special education services, Virginia must comply with the federal requirements outlined in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), and its federal implementing regulations, at 34 C.F.R. Part 300, to continue to be eligible for federal special education funding. In 2007-2008, Virginia expects to receive \$273.1 million in federal special education funding.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The revision of these regulations is essential to protect the health, safety, and welfare of students with disabilities in Virginia. By ensuring that Virginia’s state special education regulations are aligned with federal requirements, VDOE will ensure that students with disabilities in the Commonwealth have available a free appropriate public education and are afforded the procedural safeguards guaranteed by federal law.

The revision process will also strive to ensure consistency by incorporating requirements of the *Code of Virginia* and other regulations that apply to the provision of special education in Virginia, and strive to clarify areas of ambiguity from the previous set of regulations.

Finally, the revision of the state special education regulations is required to ensure compliance with the IDEA 2004, and with its federal implementing regulations, at 34 C.F.R. Part 300, effective October 13, 2006. Alignment with these federal mandates will ensure that students with disabilities in Virginia may continue to benefit from federal special education funding, which will total approximately \$273.1 million in 2007-2008.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

To clarify existing areas of ambiguity and to ensure compliance with the federal requirements outlined in IDEA 2004, and its federal implementing regulations, the current regulations (8 VAC 20-80) are being repealed and concurrently replaced with new regulations (8 VAC 20-81). Substantive new changes are proposed for the following areas: 1) Functions of the Virginia Department of Education; 2) Referral for evaluation; 3) Eligibility determinations; 4) The development, review and revision of a student’s individualized education program (IEP); 5) Parentally-placed private school students; 6) Discipline; 7) Procedural safeguards, including the appointment of surrogate parents and dispute resolution 8) Local

educational agency administration and governance; 9) Funding; and 10) The requirements regarding highly qualified personnel.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The proposed revisions to the state regulations governing special education are advantageous to the public, the agency and the Commonwealth in that the proposed revisions ensure compliance with changes in federal and state laws and regulations, which impact the provision of special education and related services in Virginia. Compliance with new federal mandates, as outlined in IDEA 2004 and its federal implementing regulations, will ensure Virginia’s continued eligibility for federal special education funding. In 2007-2008, federal funding will provide approximately \$242.3 million in direct funding to local school divisions to support special education programs, and provide an additional \$30 million to support training and technical assistance efforts to local school divisions, and funding for compliance and monitoring activities. In addition, the proposed revisions will ensure that students with disabilities have available a free appropriate public education (FAPE) and are afforded the procedural protections guaranteed by federal law. Finally, the proposed changes incorporate recommendations to improve the state regulations governing special education, clarifying previous areas of ambiguity.

There are no identifiable disadvantages to the general public, the agency, or the Commonwealth for revising these regulations.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

See Attachment #1.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No individual locality will bear any identified disproportionate material impact from the proposed revisions. Rather, all local educational agencies will be affected by the recommended changes.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Virginia Board of Education is seeking comments on the following:

- The costs and benefits of the proposal and the potential impacts of this regulatory proposal. Information may include 1) projected reporting, recordkeeping and other administrative costs, and 2) a description of less intrusive or costly alternative methods of achieving the purpose of the regulation; and
- Benefits and concerns of the new eligibility criteria proposed in 8 VAC 20-81-80, including any recommended changes or deletions to those provisions.

Anyone wishing to submit written comments may do so by mail to Melissa C. P. Smith, Coordinator of Administrative Services, Office of Dispute Resolution and Administrative Services, Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23218-2120; by fax at 804-786-8520, attention: "Regulations Revision Process"; or by e-mail at ReviseSpedRegs@doe.virginia.gov. Staff may be contacted by telephone at 804-225-2013. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

Public hearings will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall Web site (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Notice of the public hearings will also be posted on the regulations revision Web site, <http://www.doe.virginia.gov/VDOE/dueproc/regulationsCWD.html>, and as required by the Virginia Department of Education. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus ongoing expenditures</p>	<p>There will be ongoing administrative costs associated with the changes in the <i>Regulations Governing Special Education Programs for Children with Disabilities in Virginia</i> which will be borne by the Virginia Department of Education, and local educational agencies. However, existing allocations should be sufficient to fund the state's responsibilities.</p>
<p>Projected cost of the regulation on localities</p>	<p>It is anticipated that the additional costs associated with the implementation of the proposed revisions will be minimal.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Those affected by the proposed regulations will include the Virginia Department of Education, school divisions, state-operated programs, and families of children with disabilities.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity,</p>	<p>The Virginia Department of Education, 132 school divisions, 17 state-operated programs, 26 detention homes, and 172,704 students with disabilities and their families. The proposed regulations do not</p>

<p>including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>affect small businesses.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>Estimates of the cost of the proposed regulations will vary based on the size of the local educational agency, and the methods which are used to ensure compliance with the new requirements. However, the additional costs created by the proposed changes should be minimal. The proposed regulations do not affect small businesses.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

To continue to be eligible for federal special education funding, Virginia’s state regulations regarding special education must be amended to align with federal statutory and regulatory mandates. No other viable alternative exists. However, in accordance with 34 C.F.R. § 300.199, efforts have been made to minimize the number of rules, regulations, and policies to which the local educational agencies are subject. Small businesses will not be affected.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

During the development of the proposed regulations, VDOE has made efforts to minimize the number of rules, regulations, and policies to which the local educational agencies are subject, while still ensuring compliance with the IDEA 2004, its federal implementing regulations, and other laws and regulations that impact the provision of special education to students with disabilities in Virginia.

Small businesses will not be impacted by these regulations.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

See Attachment #2.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* are not anticipated to have an impact on the institution of the family or on family stability. However, parental involvement continues to be a fundamental component of the special education process.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Note: The current regulations are proposed for repeal (8 VAC 20-80-10, et seq.) and new regulations (8 VAC 20-81-10, et seq.) are being promulgated.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10 Repealed	10 Definitions	Repealed	<p>Definitions for the following terms have been added to comply with federal requirements, or to provide clarity: Act; Alternative assessment; Career and technical education; Cognitive disability; Collaboration; Core academic subjects; Co-teaching; Dangerous weapon; Destruction of information; Educational placement; Educational service agencies; Eligible student; Equipment; Excess costs; Federal core academic subjects; Highly qualified special education teacher; Homeless children; Individualized education program team; Intellectual disability; Limited English proficient; National Instructional Materials Access Center (NIMAC); National Instructional Materials Accessibility Standard (NIMAS); Personally identifiable; Scientifically-based research; Serious bodily injury; Services plan; Special Education Hearing Officer; Timely manner; Universal design; and Ward of the state.</p> <p>Definitions for the following terms were modified to comply with federal requirements, or to provide clarity: Age of eligibility; Alternate assessment; Assistive technology device; Change in placement; Change in placement for purposes of discipline; Child with a disability; Consent; Developmental delay; Education record; Hearing impairment; Home tutoring; Individualized education program; Initial placement; Interpreting services; Local educational agency (LEA); Orientation and mobility services; Orthopedic impairment;</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>Other health impairment; Parent; Participating agency; Private school children with disabilities; Related services; School health services and school nurse services; Special education; Specific learning disability; Speech or language impairment; State-operated programs; Transition Services; Traumatic brain injury; and Vocational education.</p> <p>Definitions for the following terms were moved to this section from another section of the regulations: Controlled substance; Illegal drug; and Weapon.</p> <p>The following terms were deleted: Child study committee; Impartial Hearing Officer; Implementation plan; Interpreting personnel; Itinerant; Qualified personnel; and Severe disability.</p>
<p>30 Repealed</p>	<p>20 Functions of the Virginia Department of Education</p>	<p>Repealed</p>	<p>To comply with federal requirements, provisions were included or modified which outline the VDOE's responsibilities to do the following:</p> <ul style="list-style-type: none"> • Ensure children with disabilities are included in all state-wide and division-wide assessments; • Ensure children with disabilities have available to them the variety of educational programs and services available to non-disabled children; • Supervise educational programs; • Assist LEAs and participating state agencies to ensure state and federal requirements regarding "least restrictive environment" (LRE) are implemented; • Review and evaluate compliance of licensed private nonsectarian special education schools; • Establish a state special education advisory committee (SSEAC) that meets the membership requirements outlined in the federal special education regulations; • Establish goals for the performance of children with disabilities that promote the purposes of IDEA 2004 and are the same as Virginia's objectives under the "No Child Left Behind Act" (NCLB), and address graduation and drop-out rates, including performance indicators to assess progress toward achieving these goals; • Establish and maintain qualifications to ensure that personnel, including paraprofessionals, are appropriately and adequately prepared and trained (including highly qualified provisions); • Respond to complaints filed by parents regarding staff qualifications; • Ensure compliance with the requirements of the McKinney-Vento Act as it impacts the provision of special education and related services to children with disabilities; • Report and certify annually to the United States Department of Education the number of children with disabilities receiving special education and related services on a date between October 1 and December 1 of each year, rather than before February 1 each year; • Ensure that a practical method is developed and implemented to determine if significant disproportionality based on race and ethnicity is occurring in LEAs, and if so, that VDOE takes the steps required by federal mandates; • Ensure LEAs are informed of responsibilities to effectively implement procedural safeguards for children with disabilities; • Ensure a practical method is developed and implemented to examine data to determine if significant discrepancies occur in the rate of long-term suspensions and expulsions for children with disabilities, and if so, that VDOE follows federal requirements; • Adopt the NIMAS for providing instructional materials to blind persons or other persons with print disabilities; • Ensure that parents of children with disabilities are not required to obtain a prescription for a controlled substance on behalf of their child as a condition of the child attending school, or receiving an evaluation or special education and related services; and • Monitor, enforce, and provide technical assistance regarding the IDEA 2004, in accordance with the federal special education regulations. <p>In accordance with new federal requirements, the provision that VDOE develop and implement a comprehensive system of personnel development was deleted.</p>

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			<p>The due date for the SSEAC's annual report to the Board of Education was modified from July 1st of each year to October 1st.</p> <p>To minimize the provisions that exceed federal requirements, the requirement that procedures be established to disseminate information from research, demonstration programs, and projects regarding children with disabilities was deleted.</p>
<p>40 Repealed</p>	<p>30 Responsibilities of local school divisions and state-operated programs</p>	<p>Repealed</p>	<p>The provisions outlining which LEA is responsible for the provision of FAPE to a student were restructured to clarify existing areas of ambiguity. In addition, provisions were added to address emancipated minors, and residency disputes between LEAs, or between a parent and the LEA. A provision was also added indicating that children with disabilities are entitled to FAPE regardless of citizenship or immigration status.</p>
<p>45 Repealed</p>	<p>40 Special Education Staffing Requirements</p>	<p>Repealed</p>	<p>Provisions were added to require that special education teachers be "highly qualified," in accordance with the federal special education regulations.</p> <p>For clarity:</p> <ul style="list-style-type: none"> • Cross-references to staffing requirements outlined in the Virginia Appropriations Act, the Standards of Quality, the Standards of Accreditation, and the Virginia Licensure Regulations for School Personnel were added, and subsection A.1. was modified to ensure better alignment with these state requirements; • A requirement was added that students with disabilities be instructed in general education settings and classroom, as appropriate, given their IEP; and • The provision regarding alternative special education staffing plans was modified to indicate that an alternative staffing plan may only be approved if the LEA is seeking to implement an innovative program with which normal staffing requirements are inconsistent. <p>To increase flexibility for local school divisions, programs for early childhood special education must provide a schedule comparable in length to school age students, if determined appropriate by the child's IEP team, rather than a 5 ½ hour day.</p> <p>To provide clarity and as a result of recent case law, the provisions regarding the qualifications for educational interpreting services have been modified to provide some flexibility regarding the credentials that an educational interpreter must obtain. In addition, the provisions which previously permitted waiver of the qualifications have been limited.</p>
<p>50 Repealed</p>	<p>50 Child find</p>	<p>Repealed</p>	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • "Wards of the State" must now be included in each LEA's child find program; • Each LEA's responsibilities for child find activities relative to parentally-placed private school students were expanded; • Screenings for instructional purposes are not considered an evaluation; and • VDOE prohibits State and LEA personnel from requiring parents of children with disabilities to obtain a prescription for a controlled substance on behalf of their child as a condition of the child attending school, or receiving an evaluation or special education and related services. However, LEA personnel may share classroom-based observations with the parents regarding a student's performance, or need to be evaluated. <p>In accordance with the <i>Code of Virginia</i> and the Board of Education regulations, children must be screened for scoliosis.</p> <p>To minimize state regulations that exceed the federal requirements, the following requirements were modified:</p> <ul style="list-style-type: none"> • Specific provisions which outlined how a LEA was required to conduct its annual public awareness campaign were replaced by a single provision which requires that each LEA have procedures to document its public

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			awareness campaign; <ul style="list-style-type: none"> • The timelines associated with screenings, and the requirement that specific measures or instruments be used during screenings, were removed and replaced by a single provision which requires each school division to have screening procedures, which include timelines, to document that children are screened in accordance with the requirements of the <i>Code of Virginia</i> and other state regulations; and • The multiple requirements and timelines regarding Child Study Committees were removed, and replaced by a provision which requires LEAs to develop local procedures which meet specified requirements to review the records of, assess the provision of appropriate instruction to, and review the performance evidence for a child who has been referred. LEAs must also have procedures to process in a timely manner all referral requests for a child suspected of having a disability.
52 Repealed	60 Referral for initial evaluation	Repealed	To comply with federal requirements, the following provisions were added: <ul style="list-style-type: none"> • A referral for an initial evaluation may be made by the VDOE or any state agency; • Evaluation requirements, identifying the information to be obtained and the comprehensive nature of the assessments; • Exceptions to the 65 business day timeline for the completion of an evaluation; and • New parental consent provisions for initial evaluations, including the LEA's options and responsibilities if a parent fails to provide, or refuses consent for an evaluation; that consent for an initial evaluation is not consent for initial services; reasonable efforts must be made to obtain parental consent; and that under certain circumstances, parental consent is not required for the initial evaluation of a ward of the state. To increase flexibility for local school divisions and parents, the parent and the eligibility group may agree in writing to extend the 65 day timeline to obtain additional data for any eligibility determination. To minimize state regulations that exceed the federal requirements, the following requirements were deleted or modified: <ul style="list-style-type: none"> • The multiple requirements and timelines regarding Child Study Committees were removed; and • The timeline for the completion of an evaluation is triggered by receipt of parent consent, not receipt of the referral for evaluation by the Director of Special Education or designee.
54 Repealed	70 Evaluation and Reevaluation	Repealed	To comply with federal requirements, the following provisions were added: <ul style="list-style-type: none"> • The team must review local or state assessments and classroom-based observations; • The team must determine what additional data is necessary to determine the child's educational needs, and present level of academic achievement and related developmental needs; • New requirements regarding the administration of an evaluation in the language and form most likely to yield accurate information; • A written copy of the evaluation report must be provided at no cost to the parent; • Assessments of a child with a disability, or who is suspected of having a disability, who transfers between LEAs in the same school year, must be coordinated by the LEAs to ensure prompt completion of the full evaluation; • A reevaluation must be completed if the LEA determines that the child's educational or related services needs warrant a reevaluation, and at least every three years, unless the parent and the LEA agree that an evaluation is unnecessary; • A LEA must not conduct a reevaluation more than once a year unless the LEA and parent agree otherwise; • The LEAs responsibilities regarding parental consent when administering an evaluation that is administered to all children, and when the parent of a child who is home-instructed, home-tutored, or parentally-placed in a private school refuses, or fails to respond to a request to provide consent to evaluate; and

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			<ul style="list-style-type: none"> • Modifications were made to the requirements if additional data is not needed for an evaluation, including: <ul style="list-style-type: none"> ➢ A LEA must provide the parent with prior written notice (PWN) of the right for a parent to request an evaluation to determine the child's educational needs; and ➢ A LEA is not required to gather additional information unless the parent requests the evaluation for the purpose of determining if the child continues to have a disability or to determine the child's educational needs. <p>For clarity:</p> <ul style="list-style-type: none"> • A provision was added, indicating that the parent may resolve a dispute regarding the LEA's refusal to do an evaluation, via mediation or due process procedures; • Where appropriate, provisions that apply to both evaluations and reevaluations were consolidated; and • A provision was inserted, noting that a LEA is not required to evaluate a child with a disability who graduates with a standard or advanced diploma, but the parent must receive PWN of the change in placement. <p>To minimize state regulations that exceed the federal requirements, the following requirements were deleted or modified:</p> <ul style="list-style-type: none"> • Requirements outlining who must be evaluated and the procedures that a LEA must use to complete the evaluation, as outlined in the previous regulations, at 8 VAC 20-80-54 A. through C., were replaced with the requirement that LEAs establish procedures for evaluations and reevaluations in compliance with other provisions that outline federal requirements; • The provision allowing the group to conduct its review without a meeting was deleted; • The timeline for the completion of an evaluation is triggered by receipt of parent consent, not receipt of the referral for evaluation by the Director of Special Education or designee; and • The requirement that a triennial evaluation be initiated no less than 65 business days prior to the third anniversary of the last date of eligibility was removed. <p>To increase flexibility for local school divisions and parents, the parent and the eligibility group may agree in writing to extend the 65 day timeline to obtain additional data for any eligibility determination.</p>
<p>56 Repealed</p>	<p>80 Eligibility</p>	<p>Repealed</p>	<p>The timeline requirements previously outlined at 8 VAC 20-80-56 A.1. through A.3. were deleted from this section. They are included in 8 VAC 20-81-70.</p> <p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • In addition to determining whether or not a child is eligible for special education and related services, the eligibility group must determine the educational needs of the child; • A child may not be determined eligible for special education and related services if the determinant factor is the lack of appropriate instruction in math or reading, including the essential components of reading instruction; • The requirements for determining a child eligible as a child with a specific learning disability; and • Parental consent must be obtained before personally identifiable information is released for children who are parentally placed in a private school outside their LEA of residence. <p>The following provisions are required by the federal regulations relative to eligibility determinations for specific learning disabilities, but have been applied to all eligibility determinations:</p> <ul style="list-style-type: none"> • Required eligibility group considerations; • Requirements for documenting the eligibility group's determination of eligibility; • New required members of the eligibility group; and • Requirements that the eligibility group include at least one member who is

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			<p>trained in observation, outlining the LEA's obligation to observe a child as part of the eligibility process.</p> <p>New provisions outline the qualifications of the eligibility group members.</p> <p>For clarity:</p> <ul style="list-style-type: none"> • A provision was added that a determination regarding eligibility must be made on an individual basis by the eligibility group; • New eligibility criteria were added for the following disabilities: Autism, deafness, developmental delay, hearing impairment, mental retardation, other health impairment, speech or language impairment, and visual impairment; and • The provisions regarding transfer students were deleted from this section, and inserted into new section 8 VAC 20-81-120. <p>To provide LEAs with flexibility, if the eligibility group determines that there is not a change in eligibility and educational needs, the IEP team is not required to convene unless the parent requests it.</p>
<p>58 Repealed</p>	<p>90 Termination of special education and related services</p>	<p>Repealed</p>	<p>To comply with federal requirements, each LEA must complete a summary of academic achievement and functional performance when a child with a disability graduates with a standard or advanced diploma or reaches the age of 22.</p> <p>For clarity, provisions outline the LEA's responsibilities for completing a summary of academic achievement and functional performance if a child with a disability exits school without graduating with a standard or advanced diploma or reaching the age of 22, and if the child returns to school after exiting.</p> <p>To minimize state regulations that exceed the federal requirements, parental consent is not required prior to the termination of special education and related services.</p> <p>For clarity, a provision was added requiring the LEA to comply with PWN requirements prior to partial or complete termination of special education and related services.</p>
<p>60 Repealed</p>	<p>100 Free appropriate public education</p>	<p>Repealed</p>	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • FAPE must be provided to children with disabilities who need special education and related services, even if they have not failed or been retained in a course or grade, and even if they have received a general educational development (GED) credential; • VDOE has a goal of providing full educational opportunity to required children with disabilities by 2015; • LEAs are not obligated to provide FAPE to children with disabilities who are eligible under IDEA Part B, but who choose to receive early intervention services under IDEA Part C; • Provisions outlining each LEA's responsibilities regarding hearing aids, surgically implanted devices, supplementary aids and services, and physical education; and • Provisions outlining VDOE's responsibilities regarding the methods and payments for ensuring children with disabilities are provided with FAPE. <p>To comply with guidance from the U.S. Department of Education, or to align the state regulations with recent case law, provisions were added that outline each LEAs responsibilities regarding the provision of personal devices, the length of the commute of a child with a disability, extended school year services, and disability harassment.</p> <p>To minimize state regulations that exceed the federal requirements, LEAs are not required to establish a goal of providing a full educational opportunity to required children with disabilities.</p> <p>For clarity, FAPE must be provided to children with disabilities who meet the age of eligibility requirements in 8 VAC 20-81-10, and to children with disabilities who reside within the school division but do not hold a valid U.S. citizenship or student visa.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
<p>62 Repealed</p>	<p>110 Individualized education program</p>	<p>Repealed</p>	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • The LEA’s responsibilities to consolidate, to the extent possible, reevaluation and IEP team meetings; • The LEA’s option to permit a child’s IEP to be amended without convening an IEP meeting, if the parent and the LEA agree, including that the IEP team members must be informed of any modifications, the meeting does not substitute for the annual IEP review, and upon request of the parent, the LEA must provide a revised copy of the IEP with the amendments incorporated; • The IEP team must include not less than one regular education teacher of the child, and not less than one special education teacher of the child, rather than “at least one” of each; • The provision previously outlined in 8 VAC 20-80-62 C. 2. c., was replaced with a provision outlining the LEA’s obligation to obtain parental consent, or the consent of a child who has reached the age of majority, and to invite a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services; • A LEA must, at the request of the parent, invite the Part C coordinator or other representative of the Part C system to attend the initial IEP meeting to assist with the smooth transition of services, and the notice of the initial IEP meeting must inform the parent(s) of this right; • If the LEA complies with certain requirements, a required member of the IEP team may be excused from attending the IEP meeting, in whole or in part; • The distinction between the secondary transition services provided to children with disabilities at age 14, and at age 16 have been deleted, including the distinction in the IEP meeting notice requirements; • During the development, review, and revision of a child’s IEP, the team must consider the academic, developmental, and functional needs of the child; however, the requirement that the results of the child’s performance on any general state or division wide assessment program be considered was deleted; • Nothing requires the inclusion of information into a child’s IEP beyond what is specifically required; • The content of a child’s IEP must include, in part, the following: A statement of the child’s present levels of academic achievement and functional performance; a statement of measurable annual goals, including academic and functional goals; for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives; a statement of any individual accommodations or modifications that are necessary to measure the child’s academic and functional performance on a state and division-wide assessment; a statement of how the child’s progress toward the annual goals will be measured and when the periodic reports on the progress the child is making will be provided; and required information regarding secondary transition, including appropriate measurable postsecondary goals based on age-appropriate transition assessments, and transition services, including courses of study, which are based on the child’s needs, and consider the child’s preferences and interests; • Deleted previous provision 8 VAC 20-80-62 F. 7. b.; and • In the development of an IEP for a preschool-aged child with a disability, the IEP team must consider an IFSP that contains the IFSP content contained in Part C, and may incorporate those components in the child’s IEP. <p>For consistency, the 30-day timeline which applies to the development of an IEP following the initial eligibility determination, also applies to the development of an IEP following a reevaluation and eligibility process, if the IEP team determines that changes are necessary. The provision previously at 8 VAC 20-80-62 B. 5. was deleted given the insertion of the above provision.</p> <p>To ensure the provision of FAPE to a child with a disability:</p> <ul style="list-style-type: none"> • An IEP must be implemented as soon as possible following receipt of parental consent, not to exceed 30 calendar days, unless the LEA documents the reasons for the delay; and

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<ul style="list-style-type: none"> Transition services must be initiated for a student with a disability prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14, and the IEP must include, if appropriate, a statement of interagency responsibilities or any needed linkages. <p>In accordance with guidance from the U.S. Department of Education, the LEA determines the school personnel to fill the roles of the required IEP team members.</p> <p>For clarity, the following provisions were added:</p> <ul style="list-style-type: none"> If a parent asks for revisions to the IEP, and if the LEA considers the request unreasonable, the LEA must advise the parent in writing of the reasons for the denial, and provide the parent with dispute resolution options; If an LEA uses alternative means of ensuring parent participation in meetings, and if that results in additional costs, the LEA is responsible for those costs; The provisions regarding allowing a parent to audiotape or videotape a meeting were modified, distinguishing between the parent's right to audiotape an IEP meeting, and the LEA's option to have policies, if certain criteria are met, that prohibit, limit, or otherwise regulate the use of video recording devices at IEP meetings, or audio or video recording devices at meetings other than IEP meetings; The timeline for providing the parent with a copy of the child's IEP is no later than 10 calendar days following the IEP meeting; An IEP team may determine that benchmarks or short-term objectives are required for any child with a disability if necessary for the child to benefit educationally; For a child pursuing a modified standard diploma, the IEP team must consider the child's need for occupational readiness upon school completion; and The provisions which were previously at 8 VAC 20-80-62 H. were restructured without making substantive changes. <p>The following provisions were deleted:</p> <ul style="list-style-type: none"> Former provision 8 VAC 20-80-62 C. 1. h., which exceeded the federal requirements. However, the child's caseworker may still attend IEP meetings at the discretion of the LEA, or someone meeting the definition of a "parent;" and Former provision 8 VAC 20-80-62 F. 5. f., as it is no longer applicable.
	<p>120 Transfer students</p>		<p>For clarity, these provisions, which were previously included as part of 8 VAC 20-80-56, have been moved to their own section. This section, which has traditionally been Virginia-specific, has been modified to include the following new federal requirements regarding the transfer of students between LEAs in Virginia, and to an LEA in Virginia from another state:</p> <ul style="list-style-type: none"> The new LEA must take reasonable steps to obtain the child's records from the previous LEA in which the child was enrolled, and the previous LEA must take reasonable steps to respond to the request from the new LEA; and The new LEA must provide FAPE to the child in consultation with the parents(s), including services comparable to those described in the child's IEP from the previous LEA until the new LEA either adopts the child's current IEP, or conducts an evaluation, if necessary, and develops and implements a new IEP. <p>For clarity, all of the Virginia-specific requirements were modified, and now include the following:</p> <ul style="list-style-type: none"> If an LEA is not forthcoming in the provision of a child's educational records, VDOE may be contacted for assistance; If the new LEA is unable to obtain the IEP from the previous LEA or the parent, the new LEA is not required to provide the student with special education and related services. Rather, the student may be placed in a general education setting, pending an evaluation, if an evaluation is necessary; The LEA may develop and implement an interim IEP while obtaining and

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			<p>reviewing the information needed to develop a new IEP;</p> <ul style="list-style-type: none"> • If the parent does not consent to a new or interim IEP, or if the LEA determines that an evaluation is necessary, the LEA must provide FAPE to the child in consultation with the parents(s) including services comparable to those described in the child's IEP from the previous LEA, and dispute resolution options may be initiated, if necessary; • If the LEA determines that an evaluation is necessary, the LEA must comply with the requirements for notice, to initiate and conduct an evaluation, determine eligibility, and develop an IEP; and • To comply with the requirements of the Comprehensive Services Act (CSA), provisions were added which outline each LEA's responsibilities if a child with a disability is placed in a private residential school under CSA, and then transfers. These provisions include a 30 day transition period during which the former CSA team is responsible for funding services, and the new LEA must review and revise, if necessary, and implement a new IEP.
<p>64 Repealed</p>	<p>130 Least restrictive environment and placements</p>	<p>Repealed</p>	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • Children with disabilities must participate with children without disabilities to the maximum extent appropriate, including in the provision of nonacademic and extracurricular services and activities; • LEAs must ensure that each child with a disability has the supplementary aids and services determined appropriate and necessary by the child's IEP team to participate in nonacademic settings; and • Language was amended to note that benchmarks and short-term objectives are no longer required for all children with disabilities. <p>Deleted the listing of alternative placements previously listed in 8 VAC 20-80-64 B. 2. a., and included a reference to 8 VAC 20-81-10's definition of the term "special education," where the alternative placements are listed.</p> <p>Modified 8 VAC 20-80-64 B. 2. b. to require, versus recommend, that a continuum include "integrated service delivery."</p>
<p>65 Repealed</p>	<p>140 Placement of children at the Virginia Schools</p>	<p>Repealed</p>	<p>To increase flexibility for school divisions and the Virginia schools, deleted the requirement that school divisions and the Virginia schools develop contractual agreements to ensure compliance with the federal and state special education requirements. However, retained the provisions that outline responsibility for the transportation of students with a disability to and from the Virginia schools.</p>
<p>66 Repealed</p>	<p>150 Private School Placement</p>	<p>Repealed</p>	<p>To comply with federal requirements, the previous reference to "residential placement" in 8 VAC 20-80-66 A. 1., was modified to reference "a private school or facility."</p> <p>The federal language modified each LEA's responsibilities regarding children with disabilities who are parentally-placed in private schools, and the state provisions were rewritten to ensure compliance. Most significantly, a LEA is no longer responsible for those children who are residents of the LEA, and who are parentally-placed in private schools. Rather, LEA's are responsible for those children who are parentally-placed in private schools, which are physically located within the LEA. Additional federal changes to each LEA's responsibilities regarding parentally-placed private school children with disabilities include the following:</p> <ul style="list-style-type: none"> • An expansion of the LEA's child find responsibilities, including ensuring that comparable activities to those for public school students are undertaken, that LEA staff meet with representatives of private schools to determine how to conduct a thorough and complete child find process, and that the child find process ensure the equitable participation of parentally-placed private school children, and an accurate count of that population of students; • If a LEA has not expended all of its proportionate share amount for equitable services by the end of the fiscal year for which Congress appropriates the funds, the LEA must carry the funds over for an additional year; • LEAs may supplement, but not supplant, the proportionate share amount

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			<p>of federal funds for the provision of equitable services;</p> <ul style="list-style-type: none"> • In calculating the proportionate share amount, LEAs must engage in timely and meaningful consultation with private school representatives prior to completing child find responsibilities to determine the number of parentally-placed private school children attending private schools within the LEA; • The child count must be conducted by December 1st each year; • There has been an expansion of the requirements regarding the LEA's responsibility to consult with private school representatives to include five different elements, including how, where, and by whom special education and related services will be provided for parentally-placed private school students, and the types of services to be provided. If the LEA disagrees with the private school representatives regarding the provision of services or the types of services, the LEA must provide them with a written explanation of the LEA's reasoning; • Following consultation, the LEA must obtain a written affirmation from the private school representatives; • Under certain circumstances, private school representatives may file a complaint to VDOE against the LEA, and if the complainant is dissatisfied with VDOE's decision, the decision may be appealed to the U.S. Department of Education; • The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in public school, except that the requirements regarding highly qualified special education teachers do not apply; • Services may be provided by LEA employees, or through contract with the LEA; • Special education and related services provided to parentally placed private school children with disabilities, must be secular, neutral, and nonideological; • The dispute resolution options available to parentally placed private school children apply to the LEA where the private school is located; and • Each LEA must maintain for its records, and provide to VDOE, certain data regarding parentally-placed private school children. <p>For clarity, and to comply with federal requirements, the federal definition of the terms "elementary school" and "secondary school" were added. A new definition of the term "private school," was also included, outlining applicable federal and state requirements.</p>
68 Repealed	160 Discipline procedures	Repealed	<p>The section was revised to comply with federal requirements, including the addition or modification of the following provisions:</p> <ul style="list-style-type: none"> • School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to change the placement of a child with a disability who violates the code of conduct; • A short-term removal is up to 10 consecutive school days, or 10 cumulative days in a school year; • A child with a disability may be removed from their current educational placement to another setting for disciplinary reasons to the extent that the alternatives are applied to children without disabilities; • The LEA's responsibilities for providing services to a child with a disability during a short-term removal, including the LEA's responsibilities to ensure that beginning on the 11th day of removal, the student is provided with services to enable the student to continue to participate (not necessarily progress) in the general education curriculum, progress toward meeting the student's IEP goals, and be included in VDOE and division wide assessment programs; • The process by which a LEA determines if a series of removals constitute a pattern of removal was modified to indicate that if the child's behavior was substantially similar to behavior in previous incidents, a pattern may exist; however, the determination is made by the LEA on a case-by-case basis; • Under special circumstances, a LEA may remove a child with a disability to an appropriate interim alternative education setting (IAES) for up to 45 school days (rather than calendar days) regardless of whether the behavior is a manifestation of the child's disability. Special circumstances

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			<p>now include if the child inflicts serious bodily injury while at school or at a school function;</p> <ul style="list-style-type: none"> • The LEA’s responsibilities for providing services to a child with a disability during a long-term removal, including the LEA’s responsibilities to ensure that the student is provided with services to enable the student to continue to participate (not necessarily progress) in the general education curriculum, progress toward meeting the student’s IEP goals, be included in VDOE and division wide assessment programs, and receives, as appropriate, a functional behavioral assessment (FBA), and a behavioral intervention plan (BIP) to address the behavior violation so that it does not recur; • Deleted the requirement that the LEA automatically conduct a FBA and the IEP team meet to develop a BIP, if it has not already done so, no later than 10 business days after first removing a student for more than 10 school days in a school year, or commencing a long-term removal. Rather, a BIP must be developed, at a minimum when a student’s behavior interferes with his learning or that of others, or if the IEP team determines that the child’s behavior is a manifestation of his disability and a FBA or BIP have not already been completed; • Deleted the provisions, which previously appeared in 8 VAC 20-80-68 C. 4. b., regarding determining that maintaining a child with a disability in the current placement is substantially likely to result in injury to the student or others, except that if an LEA believes that maintaining the student in the current educational placement is likely to result in injury to the child or others, the LEA may request a due process hearing, and a Special Education Hearing Officer may order a change in placement to an IAES for not more than 45 school days; • A manifestation determination decision must be made by the LEA, the parent(s), and the relevant members of the IEP team, rather than by “the IEP team and other qualified personnel;” therefore, the definition of “other qualified personnel” was also deleted; • The provisions, which previously appeared at 8 VAC 20-80-68 C. 5. (2), were replaced with the new federal requirements for determining whether or not a child’s behavior is a manifestation of his disability, including the LEA’s responsibilities if the child’s behavior is or is not a manifestation of his disability; • Deleted the previous provision at 8 VAC 20-80-68 C. 6. b.; • Added provisions regarding the applicable timelines for an expedited due process hearing, including 20 school days to complete a hearing from the date the request for the hearing is filed, 10 school days following the hearing to issue a determination, and 7 calendar days to convene a resolution session, unless waived; • A Special Education Hearing Officer may return the child with a disability to the placement from which the child was removed if the Special Education Hearing Officer determines that the removal was a violation of the federal requirements or the child’s behavior was not a manifestation of the child’s disability; • The provisions which previously outlined a child’s placement during an appeal, and which included a child’s right to “stay put” in the current educational placement during an appeal were deleted. Instead, a child with a disability must remain in the IAES pending the decision of the Special Education Hearing Officer or until the expiration of the time for the disciplinary placement; • Deleted the provision which previously permitted the “behavior or performance of the student” to trigger protections for a student not yet eligible for special education and related services; • A LEA must be deemed to have knowledge that a child is a child with a disability before the behavior that precipitated the disciplinary action occurred, a teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of the LEA or to other supervisory personnel of the LEA; • A LEA is not deemed to have knowledge that a child is a child with a disability if the parent has not allowed a previous evaluation of the child, has refused services for the child, or the child has been evaluated and determined ineligible;

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			<ul style="list-style-type: none"> • Previous provisions from 8 VAC 20-80-68 C. 9. were deleted; and • The LEA is required to include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child, transmit the statement to the VDOE upon request to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students, and include the statement in the child's educational records, and with the child's IEP, when the child transfers from one school to another. Provisions which outline the content of the statement were also added. <p>For clarity, the definitions of the following terms were included in 8 VAC 20-81-10: Weapon, Controlled substance, Illegal drug, and Serious bodily injury.</p>
<p>70 Repealed</p>	<p>170 Procedural safeguards</p>	<p>Repealed</p>	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • In the case of a child with a disability who is transitioning from Part C to Part B services, the parent must be informed that an invitation to the initial IEP meeting must, at the parent's request, be sent to the Part C service coordinator or other representative to assist with a smooth transition; • To ensure parent involvement in placement decisions, parents must be provided with meeting notice meeting all requirements outlined in 8 VAC 20-81-110 E.; • The LEA must take whatever action is necessary to ensure that the parent understands and is able to participate in group discussions regarding the child's educational placement; • A child's placement in an IAES placement is an exception to the requirement that IEP teams determine a child's placement; • A parent is entitled to only one independent education evaluation (IEE) at public expense each time the LEA conducts an evaluation component with which the parent disagrees; • If a parent obtains an IEE at public expense or shares with the LEA an evaluation obtained at private expense, the evaluation results must be considered by the LEA, if it meets LEA criteria, in decisions regarding FAPE, and it may be presented by either party in a due process hearing; • If a Special Education Hearing Officer requests an IEE as part of a due process hearing, it must be at public expense; • The provision stating that the LEA may provide PWN at the same time that it requests parental consent was deleted; • The events which trigger the requirement to provide a copy of the procedural safeguards document (PSD) were modified, and it was indicated that posting of a LEA's PSD on its Web site does not satisfy the requirement to provide the PSD, as required; • The required content of the PSD was modified; • The parental consent provisions were modified, including the following: <ul style="list-style-type: none"> ➢ Consent is required prior to accessing a child's public benefits or insurance; ➢ Consent is required before inviting to an IEP meeting the representative of an agency that may be providing or paying for secondary transition services; ➢ Consent is not required prior to administering a screening to determine appropriate instructional strategies; ➢ Under certain circumstances, consent is not required before conducting an initial evaluation for a ward of the state; ➢ Consent is not required prior to providing FAPE to children with disabilities who transfer to LEAs in Virginia from another state; ➢ A LEA may, but is not required to, use mediation or due process if the parent fails to respond to a request for consent for an initial evaluation, or to override a parent's refusal to consent for an initial evaluation or reevaluation; ➢ If a parent refuses consent, or fails to respond to a request for consent, for the initial provision of special education and related services, the LEA may not use mediation or due process to obtain consent. However, the LEA's failure to provide the special education and related services is not considered a denial of FAPE, and the LEA is not required to convene an IEP meeting or develop an IEP; ➢ If a parent of a parentally-placed private school child refuses consent for

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			<p>an initial evaluation or reevaluation, the LEA may not use mediation or due process to secure consent; however, the child will not be considered eligible for equitable services;</p> <ul style="list-style-type: none"> ➤ Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services; and ➤ The LEA must make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services. <ul style="list-style-type: none"> • LEAs using private insurance or public insurance and benefits to pay for services required for the provision of FAPE must provide the parent with notice and obtain parental consent as outlined in 8 VAC 20-81-300; • An LEA must comply with a parent's request to inspect and review their child's educational records before a resolution session is convened in accordance with 8 VAC 20-81-210; • Modifications were made to the provisions outlining when parental consent is required prior to the disclosure of personally identifiable information, including that consent is required before personally identifiable information is shared between the LEA where a student resides and a LEA where the student is parentally-placed in a private school; and • If a LEA makes the option available, parents of a child with a disability may elect to receive PWN, the PSD, and notice of a request for due process by electronic mail. <p>In accordance with guidance from the U.S. Department of Education and the provisions of the <i>Code of Virginia</i>, if an electronic document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. A definition of electronic signature is included.</p> <p>Many of the requirements outlined in the previous provisions at 8 VAC 20-80-70 F. were deleted from this section and consolidated into the new 8 VAC 20-81-300.</p> <p>To minimize state regulations that exceed the federal requirements, parental consent is no longer required for the partial or complete termination of special education and related services.</p>
72 Repealed	180 Transfer of rights to students who reach the age of majority	Repealed	To comply with modifications to the Virginia Code, previous provision 8 VAC 20-80-72 C. 4. was revised to indicate that an adult student will not be considered competent if admitted to a facility for the training, treatment, and habilitation of persons with mental retardation, and to delete the section of that provision which stated that an adult student will not be considered competent if in a coma and eligible for admission to a state hospital.
74 Repealed	190 Mediation	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • Mediation is available to resolve specified issues at any time a joint resolution is made to VDOE by the LEA and the parent, including matters arising prior to the filing of a state complaint or request for due process; • VDOE and the LEA may establish procedures to offer parents and schools that choose not to use the mediation process, an opportunity to meet with a disinterested party who would explain the benefits of, and encourage the use of, mediation. • Qualified mediators must be trained in effective mediation techniques; and • If an agreement is reached, the mediation process must conclude with a written, legally binding agreement that includes required elements. <p>To assist in complying with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge; and • Mediators must not have relationships or contracts with schools or parents outside of mediations assigned by VDOE.
76 Repealed	210 Due process hearing	Repealed	<p>To comply with federal requirements, numerous provisions were added, including the following:</p> <ul style="list-style-type: none"> • Timelines for filing a request for a due process hearing; • The LEA's authority to use due process to obtain parental consent;

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			<ul style="list-style-type: none"> • The LEA’s authority to request an expedited due process hearing; • Sufficiency of a due process notice, including the procedures to challenge the sufficiency of the notice, the procedures to amend the notice, and the implications if the notice is insufficient or fails to raise an issue, including that a hearing on the issue(s) may be delayed or denied; • A copy of the PSD must be provided by a LEA upon receipt of the parent’s first request for a due process hearing in a school year; • The qualifications of the Special Education Hearing Officer; • The LEA’s responsibilities when a dispute arises during the transition of a child with a disability from Part B to Part C; • An expedited hearing must be completed within 20 school days, and a written decision must be issued within 10 school days following the hearing; • A Special Education Hearing Officer’s decision must be made on substantive grounds of whether or not the child received FAPE, and procedural inadequacies may not lead to a decision that FAPE was not provided unless certain requirements are met; • The procedures for convening, and the timelines applicable to resolution sessions, including provisions regarding written settlement agreements; • Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parent(s) and the child involved; and • The timelines for appealing a due process decision to state or federal court. <p>In compliance with the <i>Code of Virginia</i>, an oath must be administered to witnesses testifying at a due process hearing and all witnesses testify under oath or affirmation.</p> <p>To ensure clarity and compliance with the federal requirements, the provisions previously outlined in 8 VAC 20-80-76 J.19. and K.13. were modified, and J.20. and K.12. were deleted.</p> <p>To ensure compliance with federal due process timelines, the procedures for objecting to the appointment of a Special Education Hearing Officer were expanded, and the instances in which an extension to the timelines could be granted, were limited.</p> <p>To minimize the state regulations that exceed the federal requirements:</p> <ul style="list-style-type: none"> • Numerous provisions were modified or deleted as responsibility for the implementation of the due process hearing system was shifted exclusively to VDOE, rather than the responsibility being shared, in part, with the Supreme Court of Virginia. To ensure compliance with federal due process requirements, while maintaining an effective and efficient due process system, VDOE’s responsibilities include the following regarding Special Education Hearing Officers, including the establishment of procedures: recruitment, selection, and appointment; training; evaluation and determinations regarding continued eligibility to serve as a Special Education Hearing Officer; and the analysis and correction, if necessary, of Special Education Hearing Officer decisions; • The provisions, which previously appeared at 1.3.-1.5. were deleted; • A Special Education Hearing Officer may not require parties to submit briefs as a condition of rendering a decision, but the Special Education Hearing Officer may permit such a submission on the parties’ request; and • LEAs are no longer required to develop and submit an implementation plan following the rendering of a due process decision or the withdrawal of a hearing request. <p>To ensure the effective and efficient operation of the due process system, the following provisions were added or modified:</p> <ul style="list-style-type: none"> • The minimum qualifications to serve as a Special Education Hearing Officer, and the criteria for disqualification as a Special Education Hearing Officer; • To initiate a due process hearing, the LEA must advise the parent(s) and VDOE; • If a request for a due process hearing is received solely by VDOE, VDOE

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>will immediately notify the LEA, and forward a copy of the request as soon as reasonably possible, rather than within one day, as previously required;</p> <ul style="list-style-type: none"> • Requirements for the duration of the Special Education Hearing Officer's authority were added; • All disclosures must be made and received by the Special Education Hearing Officer at least five business days prior to a hearing for expedited hearings, where previously a two business day timeline had applied; • VDOE must ensure that noncompliance findings are corrected not more than one year from identification, and LEAs must, on request, provide VDOE with documentation that the area(s) have been corrected; • A Special Education Hearing Officer now has five business days from the date of agreeing to serve for an expedited hearing, to complete the tasks that were previously required to be completed within two business days of the appointment; and five, rather than two, business days to document any changes in hearing dates and send information to all parties and VDOE; • The responsibilities of the Special Education Hearing Officer regarding conducting a pre-hearing conference were modified to include the Special Education Hearing Officer's responsibility to determine the scope of the conference, to document, if applicable, the reasons for not conducting a pre-hearing conference, and the pre-hearing determinations; • The required elements of a due process decision were modified; • A Special Education Hearing Officer must issue a ruling in writing on any party's motion to quash or modify a subpoena, with a copy to all parties and VDOE; and • The circumstances under which an extension to due process hearing timelines may be granted, and the procedures for granting such extensions.
<p>78 Repealed</p>	<p>200 Complaint resolution procedures</p>	<p>Repealed</p>	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • New content requirements for a complaint, including contact information for the complainant, child-specific information, and a proposed resolution to the extent known; • A complaint must address an action that occurred not more than one year prior to the date the complaint is received, and can no longer include complaint allegations for a longer period of time, even if the violation is continuing; • The complaint must be simultaneously filed with VDOE and the LEA; • VDOE's complaint notification to the LEA must include notice that the LEA has the opportunity to propose a resolution, and the parties have the opportunity to engage voluntarily in mediation; • VDOE must conduct an investigation which includes a complete review of all relevant documentation; and • The 60 calendar day timeline for a complaint investigation may be extended if the parties agree to the extension to engage in mediation. <p>To ensure compliance with the new federal requirements regarding sufficiency of the complaint, a provision was added outlining VDOE's procedure if a complaint is insufficient.</p> <p>The requirement that VDOE send written notification of its receipt of a complaint to "other appropriate [VDOE] personnel" was deleted. For clarity, the following provisions were added:</p> <ul style="list-style-type: none"> • The LEA's responsibility to respond after receiving notification of a complaint was added; • VDOE's procedure if a complaint is filed by an individual other than the child's parent(s) or their legal counsel; and • VDOE will notify the parties in writing if the timeline for the complaint is extended. <p>For clarity, current provisions 8 VAC 20-80-78 D. through G. were reordered to mirror the complaint process, and provision 8 VAC 20-80-78 F. was modified to clarify that the withdrawal of state and federal funds for special education may occur if a LEA fails to comply with applicable laws and regulations, but only following reasonable notice, and an opportunity for a hearing by the Board of Education.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			Given other modifications in the section, the language previously located in 8 VAC 20-80-78 C.3.a. and C.3.b. was deleted.
80 Repealed	220 Surrogate parent procedures	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • A LEA must appoint a surrogate parent for a child who is a ward of the state, or who is an unaccompanied homeless youth; • Under certain circumstances, a judge may appoint a surrogate parent for a child who is a ward of the state; • A surrogate parent must be appointed within 30 calendar days of a determination that a surrogate is necessary; • A surrogate parent may not be an employee of a LEA; and • A temporary surrogate, who is a staff member of an emergency shelter, transition shelter, independent living program, or street outreach program, may be appointed to an unaccompanied homeless youth, even though the surrogate is employed by an agency involved in the education or care of the child, if the surrogate otherwise meets the qualifications to be a surrogate parent. <p>To minimize state regulations that exceed the federal requirements:</p> <ul style="list-style-type: none"> • LEAs are no longer required to notify the custodial state agency charged with the responsibility for a child when a surrogate parent is appointed; • The language previously in 8 VAC 20-80-80 B. 6. b., which referenced the surrogate parent's consent to the termination of services was deleted; • The requirement that a surrogate parent reside in the same general geographic area as the child was deleted; and • The training requirements previously outlined in 8 VAC 20-80-80 D. 1. b. have been modified to indicate that a surrogate parent must have knowledge and skills to ensure adequate representation of the child. Surrogate parents are no longer required to complete a LEA approved training session prior to representing the child or to attend annual training thereafter.
90 Repealed	230 Local educational agency administration and governance	Repealed	<p>To comply with federal requirements, provisions were added which indicate:</p> <ul style="list-style-type: none"> • A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context; • A timeline for the LEA's participation in a transition planning conference for a student transitioning from Part C to Part B; • New LEA responsibilities regarding migratory children and early intervening services; and • The LEA's responsibilities to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner. These new provisions outline the LEA's option to coordinate with the NIMAC. <p>The requirements regarding the LEA's submission of an annual plan were revised to clarify the LEA's responsibility. Also, in accordance with federal modifications, LEAs are no longer required to submit copies of their policies and procedures, or the revisions of those policies and procedures to VDOE for approval; and LEAs are no longer required to develop and implement a comprehensive system of personnel development.</p> <p>The requirements regarding the local advisory committee (LAC) were modified:</p> <ul style="list-style-type: none"> • To indicate that a majority of the committee must be parents of children with disabilities or individuals with disabilities, and include representation of gender and the ethnic population of the local school division; • To delete the requirement that LEA personnel may only serve as consultants; and • To clarify the role of the LAC, including in the review of the school division's annual plan. <p>For clarification, a provision was inserted which outlines a LEA's responsibility for providing special education and related services to a child with a disability whose second birthday falls on or before September 30th.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
100 Repealed	240 Eligibility for funding	Repealed	In compliance with federal requirements, LEAs are no longer required to submit copies of their policies and procedures, or the revision of those policies and procedures to VDOE for approval.
110 Repealed	250 State funds for local school divisions	Repealed	<p>To comply with federal requirements, no state funding mechanism will result in placements that deny children with disabilities their right to be provided FAPE in the least restrictive environment.</p> <p>To ensure compliance with the <i>Code of Virginia</i>, provisions were expanded that outline VDOE's obligation to reimburse LEAs for the education of children with disabilities who are not residents, but who are in the LEA as a result of a placement in foster care, a group home, or an orphanage or children's home.</p> <p>The language regarding transportation which previously appeared at 8 VAC 20-80-110 B. 3., was deleted to comply with other regulations of the Virginia Board of Education.</p> <p>The provisions regarding the reimbursement for children participating in public regional special education programs was modified to provide the Virginia Board of Education with greater flexibility.</p>
120 Repealed	260 Federal funds	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • Provisions were added which outline the LEA's responsibilities regarding the following: Excess costs; Maintenance of effort; and Early intervening services, including their relationship to a determination by VDOE that significant disproportionality based on race and ethnicity is occurring within the LEA in the identification of children with disabilities; • Part B funds may be used to supplement, but not supplant state and local expenditures for special education and related services; and • The language, which previously permitted the awarding of "sliver grants," was deleted.
130 Repealed	270 Funds to assist state-operated programs	Repealed	For clarity, a provision was added to indicate that state funds for the education of children with disabilities in regional and local jails are appropriated to VDOE for distribution.
140 Repealed	280 Funding, withholding, and recovery of funds	Repealed	<p>To comply with the <i>Code of Virginia</i>, a provision was added which outlines that if the LEA fails to comply with the regulations established by the Virginia Board of Education, the Board may withhold the LEA's state and federal funds for the education of children with disabilities, and use those funds to ensure the provision of special education and related services to such children.</p> <p>To comply with federal requirements, if a LEA is notified in writing by VDOE of a decision to withhold funds, the LEA must provide public notice to its jurisdiction regarding the pendency of the action.</p> <p>For clarity, provision 8 VAC 20-80-140 C. was modified to clarify that the withdrawal of state and federal funds for special education may occur if a LEA fails to comply with applicable laws and regulations, but only following reasonable notice, and an opportunity for a hearing by the Board of Education.</p>
150 Repealed	290 Appeal of administrative decision regarding funding	Repealed	<p>To comply with federal requirements, a LEA must appeal within 20 days of a decision made during an administrative hearing for VDOE to withhold its funding.</p> <p>To minimize state regulations that exceed the federal requirements, language regarding the rates set for the regional special education programs was deleted.</p>
152 Repealed	300 Use of public and private insurance	Repealed	To comply with federal requirements, the section was modified to indicate that like with private insurance, if a LEA is seeking to access a child's public benefits or insurance to provide the child with services required for FAPE, the LEA must obtain informed parental consent each time that access to the child's public benefits or insurance is sought, and provide the parent with

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			notice containing specific elements, including that the parent's refusal to allow access does not relieve the LEA of its responsibility to provide FAPE to the child at no cost.
155 Repealed	310 Attorneys' fees	Repealed	To comply with federal requirements, provisions were added which outline who may be awarded reasonable attorneys' fees, and that attorneys' fees may not be awarded relative to a resolution session.
160 Repealed	320 Additional responsibilities for programs with children with disabilities in residence or custody	Repealed	To comply with federal requirements, the requirement for state-operated programs to develop a comprehensive system of personnel development was deleted, and requirements to ensure that personnel are appropriately and adequately prepared and trained, including requirements for paraprofessionals, were added.
190 Repealed	330 Compliance with § 504 of the Rehabilitation Act of 1973, as amended	Repealed	To ensure compliance with Section 504 of the Rehabilitation Act of 1973, as amended, LEAs are required to adopt grievance procedures that incorporate due process standards and provide for the resolution of complaints. For clarity, provisions were added indicating that if the LEA uses due process procedures to resolve complaints, the LEA is responsible for 100 percent of the reimbursement costs; and VDOE trains Special Education Hearing Officers on the requirements of Section 504.

Town Hall Form – Attachment #1

Proposed Regulation Agency Background Document

Comparison of Virginia Regulations and IDEA 2004

Listing of Virginia-Specific Regulations Exceeding Federal Regulations

Table of acronyms:

- VAC: Virginia Administrative Code
- COV: Code of Virginia
- SOQ: Virginia’s Standards of Quality
- SOA: Virginia’s Standards of Accreditation
- CSA: Virginia’s Comprehensive Services Act
- VDHH: Virginia Department of the Deaf and Hard-of-Hearing Regulations
- FERPA: Family Education Rights and Privacy Act

8 VAC 20-81-10 Definitions

Provision	Source of Requirement	Discussion
Age of eligibility	COV Prior Virginia Regulations	Long-standing Virginia requirement. Incorporated the COV, § 22.1-213. Specifies services to begin at age 2; initial language in COV in 1972 and subsequent Virginia Regulations. Age 2 is further defined as 2 by September 30 of a given year.
Age of majority	COV New in 2001-02 Virginia Regulations	Created definition to specify the age of majority. Incorporated the COV, § 1-204. Specifies age 18 as the age of majority. The IDEA 1999 federal regulations reference age of majority.
Alternate assessment	New in 2001-02 Virginia Regulations	Created definition to assist in the implementation of the federal requirements.
Alternative assessment	New in 2007	Created definition to assist in the implementation of the federal requirements allowing states to create alternative assessments.
Audiology	COV New in 2001-02 Virginia Regulations	Created definition to incorporate the COV, § 54.1-2600. Included provision that the services are to be provided by an audiologist licensed by the Board of Audiology and Speech-Language Pathology.
Behavioral intervention plan	New in 2001-02 Virginia Regulations	Created definition to assist in the implementation of the IDEA federal 1999 regulations. Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Calendar day	New in 1994 Virginia Regulations	Expanded federal definition to assist in the implementation of the federal requirements.
Career and Technical Education	New in 2007	Included definition from the Carl Perkins Act to ensure that special education needs are reflected and that these options are available to students with disabilities.
Caseload	SOQ New in 2001-02 Virginia Regulations	Created definition based on SOQ formula.
Change in identification	New in 1994 Virginia Regulations	Carried over definition from former state regulations to assist in the implementation of the federal requirements.

Change in placement	New in 1994 Virginia Regulations	Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Chapter	New in 2001-2002 Virginia Regulations	Created definition to assist in the implementation of the IDEA federal 1999 regulations. Carried over definition to ensure clarity.
Charter schools	COV New in 2001-02 Virginia Regulations	Carried over definition from former state regulations. Tailored IDEA federal 2006 regulations term to the COV to provide clearer meaning in accordance with Virginia's implementation of the COV requirements. §§ 22.1-212.5; 22.1-212.15
Child	New in 2001-2002 Virginia Regulations	Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Cognitive disability	New in 2007	Added the term to address alternative to the use of mental retardation.
Collaboration	New in 2007	Included definition to assist in the implementation of least restrictive environment for caseload and teacher assignment responsibilities.
Complaint	New in 2001-02 Virginia Regulations	Created definition to clarify the difference between complaint under the complaints resolution procedures and "complaint" in due process hearings.
Comprehensive Services Act	COV New in 2001-02 Virginia Regulations	Created definition to incorporate COV requirements regarding CSA, the source of funding for private special education placements. § 2.2-5200 et seq.
Correctional facility	COV New in 2001-02 Virginia Regulations	Tailored IDEA federal 1999 language to COV language. §16.1-228; § 53.1-1 Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Co-teaching	New in 2007	Included definition to assist in the implementation of least restrictive environment for caseload and teacher assignment responsibilities.
Counseling services	VA Teacher Licensure Regulations Prior Virginia Regulations	Clarified that visiting teacher may provide service. Reflected Virginia's recognition of visiting teachers.
Developmental Delay	Prior Virginia Regulations	Established definition and age range. IDEA federal 1999 regulations directed SEA to establish definition. Virginia first used DD in 1990. Proposed regulations lowered age range to include only students from 2 – 5 years.
Due process hearing	New in 2001-02 Virginia Regulations	Created definition to clarify difference between due process and complaints systems as dispute resolution options.
Eligible student	New in 2007	Created definition to clarify that students who have reached the age of majority have rights transferred to them.
Federal Core Academic Subjects	New in 2007	The term is used to reflect the requirements in No Child Left Behind.
Federal financial assistance	New in 1990 regulations	Created definition to incorporate and clarify federal terminology. 34 CFR § 104.3(h)
Functional behavioral assessment	New in 2001-02 Virginia Regulations	Created definition to assist in implementation of the IDEA federal 1999 regulations. Carried over definition from former state regulations to assist in the implementation of the federal requirements.
General curriculum	New in 2001-02 Virginia Regulations	Created definition to clarify meaning of term in Virginia.
Home-based instruction	SOQ New in 2001-02 Virginia Regulations	Created definition to reflect SOQ funding and tailor IDEA federal regulations terminology to Virginia.
Homebound instruction	SOA Prior Virginia Regulations	Incorporated SOA language.

Home instruction	COV New in 2001-02 Virginia Regulations	Created definition to incorporate and clarify federal 1999 regulations terminology and COV terminology. § 22.1-254.1 Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Home tutoring	COV New in 2001-02 Virginia Regulations	Created definition to incorporate and clarify IDEA federal 1999 regulations terminology and COV terminology. § 22.1-254 Carried over definition from former state regulations, with modifications, to assist in the implementation of the federal requirements.
Individualized family service plan	Part C/IDEA New in 2001-02 Virginia Regulations	Created definition to incorporate and clarify language from Part C.
Infant and toddler with a disability	Part C/IDEA COV New in 2001-02 Virginia Regulations	Modified federal definition to incorporate language from Part C and COV to clarify the term. § 22.1-213
Initial placement	Prior Virginia Regulations	Carried over definition from previous regulations to clarify the term as used in the IDEA federal 1999 regulations.
Intellectual disability	New in 2007	Added the term to address alternative to the use of mental retardation.
Interpreting services	New in 2007	Added to clarify the services provided by interpreters
Level 1 and Level II services	SOQ New in 2001-02 Virginia Regulations	Created definition to reflect SOQ formula.
Manifestation determination review	New in 2001-02 Virginia Regulations	Created definition to assist in the implementation of the IDEA federal 1999 regulations. Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Medical services	COV New in 2001-02 Virginia Regulations	Created definition to incorporate COV. § 22.1-270. Added nurse practitioner to definition as a service provider.
Multiple disabilities	SOQ Prior Virginia Regulations	Incorporated language from the SOQ formula. Changed examples since some readers interpreted the examples as requiring mental retardation to be one of the disabilities, which is not an IDEA requirement.
Notice	New in 2001-02 Virginia Regulations	Created definition to assist in the implementation of the IDEA federal 1999 regulations. Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Occupational therapy	COV Board of Health Professions Regulations, New in 2001-02 Virginia Regulations	Included IDEA 1999 federal regulation language. Additionally, reflected licensure requirement for OT found in COV and the Board of Health Professions regulations. §§ 54.1-2956; 54.1-2400. Clarified that services may be provided under supervision of an OT.
Parent	COV Prior Virginia Regulations	Expanded federal definition to incorporate COV provisions regarding foster parents. §§ 16.1-283; 16.1-277.01; 16.1-277.02; 22.1-1; and 63.2-900
Physical therapy	COV Board of Health Professions Regulations Prior Virginia Regulations	Clarified that services may be provided under supervision of a PT. Reflected licensure requirements for PT found in COV and Board of Health Professions regulations. §§ 54.1-2400; 54.1-3475
Program	Prior Virginia Regulations	Used definition from previous state regulations to clarify the term.
Psychological services	COV Board of Health Professions Regulations Prior Virginia Regulations	Reflected licensure requirements for psychologist found in COV and Board of Health Professions regulations. § 54.1-2400. Clarified that services may be provided under supervision of a psychologist.

Public notice	Prior Virginia Regulations	Continued the use of the previous state regulations to clarify the term.
Qualified person with a disability	The Rehabilitation Act New in 2001-02 Virginia Regulations	Created definition from Section 504 of The Rehabilitation Act.
Screening	COV Prior Virginia Regulations	Long-standing Virginia requirement. Implemented COV. §§ 22.1-273; 22.1-270; 22.1-273.1. Established requirement to screen hearing and vision, charging VDOE with establishing grade levels. Screening requirements for new students established by special education regulations in 1980.
Section 504	The Rehabilitation Act Prior Virginia Regulations	Definition based on The Rehabilitation Act of 1973, as amended.
Social work services	VA Teacher Licensure Regulations Prior Virginia Regulations	Includes visiting teachers, a category specific to Virginia and consistent with Virginia's Teacher Licensure Regulations.
Special Education Hearing Officer	New in 2007	The term discriminates between those individuals conducting special education due process hearings and hearing officers who conduct hearings via the Supreme Court of Virginia. Also, this term more accurately describes the role of those conducting special education hearings.
State assessment program	New in 2001-02 Virginia Regulations	Created definition to identify what portion of the assessments in Virginia is the state assessment program under IDEA.
State educational agency	Prior Virginia Regulations	Specified that VDOE is the SEA.
State-operated program	COV Prior Virginia Regulations	Modified definition to incorporate COV language. §§ 22.1-7; 22.1-340; 22.1-345
Timely manner	New in 2007	Developed to further define when materials via the NIMAS must be provided to students.
Transition from Part C services	New in 2001-02 Virginia Regulations	Created definition to clarify difference between this term and secondary transition; definition based on IDEA federal Part C regulations.
Virginia Schools for the Deaf and the Blind	COV New in 2001-02 Virginia Regulations	Created definition to implement COV. § 22.1-346.

8 VAC 20-81-20 Functions of the Virginia Department of Education.

Provision	Source of Requirement	Discussion
Requirements of SEAs	Prior Virginia Regulations	Modified IDEA federal terminology to reflect Virginia terminology (e.g., VSDBs, state-operated programs).

8 VAC 20-81-30 Responsibilities of local school divisions and state-operated programs

The following provisions are required to implement the IDEA under General Supervision. However, additional clarification was included to assist with the implementation of the requirements.

Provision	Source of Requirement	Discussion
Residency for purposes of services when placed for educational and non-educational purposes	Revised in 2007	Clarified residency for purposes of identifying LEAs responsible for serving students with disabilities, including those students whose citizenship or immigration status may be unclear. Additional language will result in decreased delay in providing services to students placed for various purposes in different settings.
Education in jails	VA Appropriation Act New in 2001-02 Virginia Regulations	Identified responsibility for educating this population consistent with the Appropriation Act.

Children in foster care	COV CSA New in 2001-02 Virginia Regulations	Referenced COV and CSA funding requirements. § 22.1-101.1
Children in nursing homes	VA Dept. for Medical Assistance Services New in 2001-02 Virginia Regulations	Referenced 1995 Office for Civil Rights interpretation and Department of Medical Assistance Services terminology for facilities.
Children in group homes	New in 2001-02 Virginia Regulations	Applied 1995 OCR interpretation to children in group homes.
Students 18 with and w/o legal guardian	New in 2001-02 Virginia Regulations	Clarified responsibility for adult children with disabilities, consistent with Virginia requirements on legal guardianship.
Responsible division in the event there is a dispute about residency	New in 2001-02 Virginia Regulations	Ensured children continue to receive services.

8 VAC 20-81-40 Special education staffing requirements

Provision	Source of Requirement	Discussion
Staffing for school-aged and pre-school-aged children	SOQ VA Teacher Licensure Regulations Prior VA Special Education Program Standards	Long-standing Virginia requirement. Established standards for grouping students and assigning teachers. Teacher assignments standards first established in 1962 and incorporated into Teacher Licensure regulations and former Special Education Program Standards regulations.
Staffing for jails	New in 2001-02 Virginia Regulations	Clarified required teacher endorsements.
Educational interpreting services	VDHH Regulations New in 2001-02 Virginia Regulations; Revised in 2007	Defines qualifications for providing educational interpreting services.

8 VAC 20-81-50 Child find

Provision	Source of Requirement	Discussion
Public awareness	Prior Virginia Regulations	Long-standing Virginia requirement. Established standards relative to SEA's obligation to establish child find process. Requirements established in 1980.
Screening – hearing and vision (including timelines)	COV Prior Virginia Regulations	Long-standing Virginia requirement. COV established requirement to screen hearing and vision prior to 1950, charging VDOE with establishing grade levels. §§ 22.1-270; 22.1-273. Screening requirements for new students established in special education regulations in 1980.
Screening – speech-language, gross and fine motor (including timelines)	Prior Virginia Regulations	Long-standing Virginia requirement. Procedures established in 1980.
Screening for Scoliosis	COV – New in 2007	COV established requirement to screen for scoliosis. § 22.1-273.1
Confidentiality and parent notification	COV IDEA and FERPA regulations New in 2001-02 Virginia Regulations	Included COV notification and federal IDEA 2006 and FERPA confidentiality requirements. § 22.1-273

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8 VAC 20-81-60 Referral for initial evaluation

Provision	Source of Requirement	Discussion
Referral requirements	Prior Virginia Regulations Revised in 2007	Long-standing Virginia requirement, since 1980.
Timeline for evaluation	Revised in 2007	Established parental consent as the initiation of the timeline for completing the evaluation.
Exceeding timeline	New in 2007	To increase flexibility for local school divisions and parents, tailored the IDEA federal 2006 regulations timeline exception regarding obtaining additional data to apply to all eligibility categories, rather than just specific learning disability.

8 VAC 20-81-70 Evaluation and Reevaluation

Provision	Source of Requirement	Discussion
Nonstandardized tests	New in 2001-02 Virginia Regulations	Established use of nonstandard tests (e.g., structured observations or sampling) with conditions; based on USDOE commentary on IDEA federal 1999 regulations.
Test the hearing of each child prior to placement	COV Prior Virginia Regulations	Implemented COV requirement that hearing be tested during evaluation for special education. § 22.1-214
Evaluation reports available to parents 2 business days before the eligibility meeting	New in 2001-02 Virginia Regulations	Board of Education decision based on parent comments to revisions of state special education regulations in 2001-02.
Timelines	Prior Virginia Regulations Revised in 2007	Long-standing Virginia requirement (since 1980) of 65-business day timeline from receipt of referral to complete evaluations and determine eligibility. Modified in 2007. Timeline is now triggered by parental consent. IDEA 2004 permits SEA to have an established timeline.
Exceed 65 day timeline	New in 2007	To increase flexibility for local school divisions and parents, tailored the IDEA federal 2006 regulations timeline exception regarding obtaining additional data to apply to all eligibility categories, rather than just specific learning disability.

8 VAC 20-81-80 Eligibility

Provision	Source of Requirement	Discussion
Eligibility group	Prior Virginia Regulations	Long-standing Virginia requirement. Virginia regulations established an eligibility team process in 1980. The function remains as an IDEA requirement.
Team work toward consensus in making decisions	New in 2001-02 Virginia Regulations	Implemented USDOE interpretation in 1999 federal regulations that voting is inappropriate and working toward consensus ensures parental rights of participation. Carried over definition from former state regulations to assist in the implementation of the federal requirements.
Forwarding information to the IEP team	Prior Virginia Regulations	Mirrored the SEA's responsibility under general supervision to establish process.
Reports by persons who do not agree with the team decision	Prior Virginia Regulations	Applied rights of students with specific learning disabilities to all students and parents.

Eligibility of 2-year olds	COV Prior Virginia Regulations	Long-standing Virginia requirement. Implemented the COV. § 22.1-213
Eligibility of child with developmental delay	Prior Virginia Regulations	IDEA federal 1999 regulations directed SEA to establish definition and age range; applied teacher licensure requirements. IDEA federal 2006 regulations permit SEA to establish a state definition.
Forward relevant information for instruction to the child's teachers if the child is not found eligible.	Prior Virginia Regulations	Reflected established practice to use diagnostic information to improve instruction. Reflected FERPA requirement regarding consent when sharing with private schools.
Additional requirements for LD eligibility applied to all disabilities	New in 2007	Applies requirements for all students found eligible to include group considerations; requirements for documenting the eligibility group's determination of eligibility; required members of the eligibility group; and requirement that the eligibility group include at least one member trained in observation and the LEA's responsibility to observe the child as a part of the evaluation process.
Determination of eligibility	New in 2007	A provision was added requiring that a determination regarding eligibility must be made on an individual basis by the eligibility group.
Eligibility criteria	New in 2007	Criteria for determination of eligibility were added for the following disabilities: autism, deafness, developmental delay, hearing impairment, mental retardation, other health impairment, speech or language impairment, and visual impairment.
IEP team meeting following eligibility meeting after a reevaluation	New in 2007	To provide LEAs with flexibility, if the eligibility group determines that there is not a change in eligibility and educational needs, the IEP team is not required to convene unless the parent requests it.

8 VAC 20-81-90 Termination of special education and related services

Provision	Source of Requirement	Discussion
Summary of academic achievement and functional performance	New in 2007	For clarity, provisions outline the LEA's responsibilities for completing a summary of academic achievement and functional performance if a child with a disability exits school without graduating with a standard or advanced diploma or reaching the age of 22, and if the child returns to school after exiting.
Terminating related service	New in 2001-02 Virginia Regulations	Specified a necessary process that is absent in IDEA federal regulations; minimizes extra meeting requirements.

8 VAC 20-81-100 Free appropriate public education

Provision	Source of Requirement	Discussion
Graduation	SOA SOQ New in 2001-02 Virginia Regulations	Implemented SOA and SOQ. Tailored IDEA federal regulations to Virginia, to mean graduation with a standard or advanced studies diploma.
Provides FAPE exception for certain incarcerated students	New in 2001-02 Virginia Regulations	Implemented Virginia's decision to exclude students 18-21 who are incarcerated and not previously identified.
Provides transportation for students with disabilities	COV Prior Virginia Regulations	Reflected both IDEA federal regulations and COV requirements. §§ 22.1-221; 22.1-347 C.
Length of school day	Prior Virginia Regulations	Carried over definition to ensure that school-aged students with disabilities are provided a school day comparable in length to the day provided to school-aged students without disabilities unless their IEP specifies otherwise.
LEA responsibility for the provision of personal devices	New in 2007	To comply with guidance from the U.S. Department of Education.
LEA responsibility for the length of a commute for a child with a disability	New in 2007	To comply with guidance from the U.S. Department of Education.
LEA responsibility for the provision of extended school year services	New in 2007	To comply with guidance from the U.S. Department of Education and case law.
LEA responsibility for disability harassment	New in 2007	To comply with guidance from the U.S. Department of Education.

8 VAC 20-81-110 Individualized education program

Provision	Source of Requirement	Discussion
IEP timeline after reevaluation	New in 2007	For consistency, the 30-day timeline which applies to the development of an IEP following the initial eligibility determination also applies to the development of an IEP following a reevaluation and eligibility process, if the IEP team determines that changes are necessary.
Implementation timeline	New in 2007	Added a 30 day timeline to the implementation of an IEP to clarify the federal language "as soon as possible".
Transition Services Mandatory Age	New in 2007	Modified the age requirement for transition services to be addressed in an IEP from age 16 to age 14.
IEP team members	New in 2007	In accordance with guidance from the U.S. Department of Education, specifies that the LEA determines the school personnel to fill the roles of the required IEP team members.
Parent request for IEP revisions	New in 2007	To add clarity, added provision to indicate that if a parent asks for an IEP to be revised and if the LEA considers the request unreasonable, the LEA must advise the parent in writing of the reasons for the denial and provide dispute resolution options.
Costs for LEA actions to ensure parent participation	New in 2007	To add clarity, added provision to indicate that if an LEA uses alternative means of ensuring parent participation in meetings resulting in additional costs, the LEA is responsible for those costs.
Taping meetings	Revised in 2007	To add clarity, and consistent with guidance from the U.S. Department of Education, the provisions regarding audio and video taping IEP meetings

		distinguish between the parent's right to audiotape an IEP meeting, and the LEA's option to have policies, if certain criteria are met, that prohibit, limit, or otherwise regulate the use of video recording devices at IEP meetings, or audio or video recording devices at meetings other than IEP meetings.
IEP Copy Timeline	New in 2007	To add clarity, a timeline was included requiring that the LEA provide the parent with a copy of the IEP no later than 10 days after the meeting.
Benchmarks	New in 2007	To add clarity, and consistent with guidance from the U.S. Department of Education, a provision was added allowing the use of benchmarks or short-term objectives if the IEP team determines that they are required for a child with a disability to benefit educationally.
Modified Standard Diploma provision	New in 2007	To facilitate appropriate post-secondary outcomes, it was specified that for a child pursuing a modified standard diploma, the IEP team must consider the child's need for occupational readiness upon school completion.
Speech-language pathologist	New in 2001-02 Virginia Regulations	Specified that the special education teacher on IEP team for students whose only disability is speech-language impairment is the speech-language pathologist. Ensured that qualified providers would develop the child's IEP, in accordance with Appendix A of the IDEA federal 1999 regulations.
IEP Implementation	New in 2001-02 Virginia Regulations	Language indicating that each LEA must provide special education and related services to a child with a disability in accordance with the child's IEP was inserted to comply with the IDEA federal 1999 regulations. This provision was retained for clarity.
IEP teams work toward consensus	New in 2001-02 Virginia Regulations	Incorporated language from Appendix A of the IDEA federal 1999 regulations.
Modified standard diploma	SOA New in 2001-02 Virginia Regulations	Reflected the addition of the modified standard diploma option to the SOA requirements.
Children with disabilities in state, regional, or local adult or juvenile correctional facilities	New in 2001-02 Virginia Regulations; revised 2007	Added language that tailored IDEA federal regulations to Virginia's correctional facilities.

8 VAC 20-81-120 Children who transfer

Provision	Source of Requirement	Discussion
Failure of an LEA to provide educational records	Revised in 2007	Specifies that if an LEA is not forthcoming in the provision of a child's educational records, VDOE may be contacted for assistance.
Inability to obtain an IEP from the previous LEA	Revised in 2007	In accordance with U.S. DOE guidance, specifies that if the new LEA is unable to obtain the IEP from the previous LEA or the parent, the new LEA is not required to provide the student with special education and related services. Rather, the student may be placed in a general education setting pending an evaluation, if an evaluation is necessary.
Interim IEP	Revised in 2007	Specifies that the LEA may develop an interim IEP while obtaining and reviewing the information needed to develop a new IEP.
Lack of parental consent	Revised in 2007	Specifies that if a parent does not consent to a new or interim IEP, or the LEA determines that an evaluation is necessary, the LEA must provide FAPE to a child in consultation with the parent(s) including services comparable to those described in the child's IEP from the previous LEA, and dispute resolution options may be initiated, if necessary.
Evaluation requirements	Revised in 2007	Specifies requirements, including notice, before initiating an evaluation.
Private residential school transfer	Revised in 2007 CSA	Specifies requirements when a child transfers from one LEA to another and is in a private residential school.

8 VAC 20-81-130 Least restrictive environment and placements

Provision	Source of Requirement	Discussion
Home-based and homebound services requirements	New in 2001-02 Virginia Regulations SOA	Distinguishes between home-based and homebound services.

8 VAC 20-81-140 Placement of children at the Virginia Schools for the Deaf and the Blind at Staunton or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton

Provision	Source of Requirement	Discussion
VSDBs	COV New in 2001-02 Virginia Regulations; Revised 2007	Clarifies roles and responsibilities of school divisions and the Virginia schools. Reflects how the Virginia schools are recognized in the COV. §§ 22.1-348; 22.1-347 c.

8 VAC 20-81-150 Private school placement

Provision	Source of Requirement	Discussion
Requirements of the CSA, the source of funding for LEA placements	COV CSA New in 2001-02 Virginia Regulations	Linked IDEA federal regulations with CSA requirements. Included language from the COV and CSA administrative requirements for funding. § 2.2-5200 et seq.
Interstate Compact for the Placement of Children	COV New in 2001-02 Virginia Regulations	Incorporated COV requirements. § 22.1-218.1

Children who are home-instructed or home-tutored	COV New in 2001-02 Virginia Regulations	Incorporated COV requirements to include home instructed and home tutored students with private school students placed by parents when FAPE is not at issue. § 22.1-254.1
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8 VAC 20-81-160 Discipline procedures – Does not exceed federal regulations

8 VAC 20-81-170 Procedural safeguards

Provision	Source of Requirement	Discussion
Electronic signature	New in 2007 COV	In order to provide maximum flexibility regarding consent and other needs for signatures, in accordance with guidance from the U.S. Department of Education and the provisions of the <i>Code of Virginia</i> , if an electronic document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. COV § 59.1-479 et seq.
Parental consent required for change in identification & revisions to IEP	Prior Virginia Regulations	Long-standing Virginia requirement. Consent provisions established in 1980. Strong support throughout previous public comment periods historically for inclusion of these requirements.

8 VAC 20-81-180 Transfer of rights to students who reach the age of majority

Provision	Source of Requirement	Discussion
Transfer rights	COV New in 2001-02 Virginia Regulations	Incorporated COV and IDEA federal regulations; specified that rights transfer at age 18. § 1-204
Standard for determining a representative for the student	New in 2001-02 Virginia Regulations	Established standard. IDEA regulations allow states to provide a vehicle for an educational representative to be determined without going to court or using a power of attorney.

8 VAC 20-81-190 Mediation

Provision	Source of Requirement	Discussion
Confidentiality pledge	New in 2007	To ensure confidentiality, parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge.
Conflict of Interest	New in 2007	To prevent conflicts of interest between state mediators and school divisions, state mediators must not have relationships or contracts with schools or parents outside of mediations assigned by VDOE.

8 VAC 20-81-200 Complaint procedures

In accordance with the IDEA federal 2006 regulations, at § 300.151, and the SEA’s general supervision responsibility, VDOE has developed written procedures for resolving complaints.

8 VAC 20-81-210 Due process hearing

Provision	Source of Requirement	Discussion
Qualifications of Special Education Hearing Officers	Implementation of System	To ensure compliance with federal due process timelines and requirements, VDOE is provided the authority to identify the criteria for appointment and disqualification as a Special Education Hearing Officer.
Training of Special Education Hearing Officers	Implementation of System	To ensure compliance with federal due process timelines and requirements, VDOE is provided authority to require training for Special Education Hearing Officers regarding the management of the hearing and compliance with applicable regulations.
Evaluation of Special Education Hearing Officers	Implementation of System	To ensure compliance with federal due process timelines and requirements, VDOE is authorized to evaluate each Special Education Hearing Officer's management of the hearing and compliance with applicable regulations.
Objections to Appointment of Special Education Hearing Officer	Implementation of System	To ensure compliance with federal due process timelines, procedures for objections to the appointment of a hearing officer were expanded.
Timeline extensions	Implementation of System	To ensure compliance with federal due process timelines, instances in which an extension to the timeline can be granted are limited.
Procedures for requesting a due process hearing	Implementation of System	To ensure the effective and efficient operation of the due process system, procedures for requesting a due process hearing are detailed to ensure that all parties are contacted.
Authority of Special Education Hearing Officers	Implementation of System	To ensure the effective and efficient operation of the due process system, the requirements for the duration of the Special Education Hearing Officer's authority were added.
Pre hearing activities	Implementation of System	To ensure the effective and efficient operation of the due process system, requirements for disclosures, securing a transcription of the hearing, tasks to be completed within five days of appointment, and the conduct of the pre-hearing conference are detailed. Special Education Hearing Officers are given the responsibility for ruling in writing on any party's motion to quash or modify a subpoena, with a copy to all parties and VDOE.
Hearing requirements	Implementation of System	In compliance with the COV, an oath must be administered to witnesses testifying at a due process hearing and all witnesses testify under oath or affirmation. Additional requirements are included to address time and place of hearings to ensure that it is conducted at a time and location reasonably convenient to the parent(s) and the child involved. § 22.1-214 B.
Post hearing activities and requirements	Implementation of System	The required elements of a Special Education Hearing Officer's decision are detailed; VDOE is required to ensure that noncompliance findings are corrected not more than one year from identification, and LEAs must, on request, provide VDOE with documentation that any areas of noncompliance have been corrected.

8 VAC 20-81-220 Surrogate parent procedures

Provision	Source of Requirement	Discussion
Role of foster parent	New in 2001-02 Virginia Regulations	Established to implement the IDEA federal 1999 regulations option for recognizing foster parents and provide more local flexibility.
Surrogate parents appointment	COV New in 2001-02 Virginia Regulations	Incorporated the COV and IDEA federal 1999 regulations. § 16.1-283; 277.01-02
Procedures for identification and recruitment of surrogate parents	Prior Virginia Regulations	Established as part of the SEA's general supervision responsibility.

LEA procedures for the appointment of surrogate parents and the provision of their services	Prior Virginia Regulations	Established as part of the SEA's general supervision responsibility.
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8 VAC 20-81-230 Local educational agency administration and governance

Provision	Source of Requirement	Discussion
Annual Plan Requirements	COV	Each LEA is required to submit a plan annually to the Board of Education. COV § 22.1-215 The plan is used as part of VDOE's general supervisory authority to ensure compliance with IDEA federal regulations.
Local Advisory Committee	Prior Virginia Regulations	Long-standing Virginia requirement, since 1980.
Responsibilities of LAC	Prior Virginia Regulations	Long-standing Virginia requirements, since 1980. Includes participation in the review of the annual plan for special education.
Membership of LAC	Prior Virginia Regulations and New Requirement in 2007	Requires that a majority of the committee be parents of students with disabilities or individuals with disabilities; requires that membership reflect gender and ethnic representation of the school division.
Regional special education programs	VA Appropriations Act Prior Virginia Regulations	Long-standing Virginia requirement. Regional programs first established in 1984 regulations.
Programs in jails	VA Appropriations Act New in 2001-02 Virginia Regulations	Established to meet IDEA requirements for this student population.
2 year olds	COV	For clarification, specifies that children who are two on or before September 30 and who meet Part B (special education) eligibility requirement and who have an IEP signed by the parent may attend Part B preschool programs. § 22.1-213

8 VAC 20-81-240 Eligibility for funding – Does not exceed federal regulations.

8 VAC 20-81-250 State funds for local school divisions

Provision	Source of Requirement	Discussion
Requirements associated with ADM, transportation, regional special education, jails, homebound services, CSA and foster care funding for LEAs	COV VA Appropriations Act CSA Administrative Requirements Prior Virginia Regulations	Ensure VDOE meets general supervision responsibilities under IDEA. § 22.1-211

8 VAC 20-81-260 Federal Funds – Does not exceed federal regulations.

8 VAC 20-81-270 Funds to assist with the education of children with disabilities in state-operated programs

Provision	Source of Requirement	Discussion
Requirements	COV VA Appropriations Act Prior Virginia Regulations	Long-standing Virginia requirement. First included in Virginia Regulations in 1980. COV § 22.1-7. For clarity, a provision was added to indicate that state funds for the education of children with disabilities in regional and local jails are appropriated to VDOE for distribution.

8 VAC 20-81-280 Funding, withholding, and recovery of funds

Provision	Source of Requirement	Discussion
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Withholding funds	COV	Allows the SEA to withhold state and federal funding when a locality fails to establish and provide a system of free and appropriate education for children with disabilities and use the funding to provide services. COV § 22.1-214 E.
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8 VAC 20-81-290 Appeal of administrative decision regarding funding

Provision	Source of Requirement	Discussion
Requirements	Education Division General Administrative Regulations (EDGAR) New in 2001-02 Virginia Regulations	SEA was required to create appeal mechanism under the EDGAR provisions.

8 VAC 20-81-300 Use of public and private insurance – Does not exceed federal regulations

8 VAC 20-81-310 Attorneys’ fees – Does not exceed federal regulations

8 VAC 20-81-320 Additional responsibilities of state boards, agencies, and institutions

Provision	Source of Requirement	Discussion
Requirements for State-operated programs	COV Prior Virginia Regulations	Incorporated COV. §§ 22.1-7; 22.1-340; 22.1-347; 22.1-348; 22.1-289; 16.1-293. Ensured SEA’s general supervision responsibilities under IDEA.
Caseloads	VA Appropriations Act Prior Virginia Regulations	Incorporated Appropriations Act requirements. Ensured SOP compliance with SEA’s requirements.

8 VAC 20-81-330 Compliance with § 504 of the Rehabilitation Act

Provision	Source of Requirement	Discussion
Compliance requirements	Prior Virginia Regulations	Clarified the obligation of the State-operated programs and the Virginia schools; to ensure compliance with VDOE’s state 504 Plan. First included in regulations in 1990.
Grievance procedures	Section 504 of the Rehabilitation Act	Clarified that LEAs are required to adopt grievance procedures that incorporate due process standards and provide for the resolution of complaints.
Use of due process	LEA Responsibility	For clarity, provisions were added indicating that the costs for the use of due process procedures by LEAs to resolve 504 complaints would be 100% the responsibility of the LEA. Further, for clarity it was noted that VDOE trains Special Education Hearing Officers in Section 504.

Appendix A. Caseload maximums

Provision	Source of Requirement	Discussion
Caseloads	SOQ VA Appropriations Act Prior Virginia Regulations	Defines caseloads as funded by the SOQ formula in the VA Appropriation Act.

Town Hall Form – Attachment #2
Proposed Regulation Agency Background Document
NOIRA Public Comment Summary

<i>Comments Received*</i>	<i>Agency Response</i>
<p>Consent (8 VAC 20-80-70 E.) - 183 comments</p> <ul style="list-style-type: none"> ○ 130 comments from LEA personnel, 2 from VCASE, 1 each from a parent and a citizen indicated opposition to at least one or more parent consent requirements beyond federal regulations. ○ 14 comments from parents, 5 comments from the Virginia Coalition, 3 comments from Just Children, and 1 comment each from SSEAC, PEATC, an IHE, and an advocate were in support of maintaining at least one or more of the additional parent consent requirements currently in effect. ○ 15 comments from parents and 1 comment each from SSEAC, Just Children, an advocate, and an IHE indicated that the regulations should distinguish “refusing” services from “failure to sign an inadequate IEP,” noting that if a parent fails to sign an inadequate Individualized Education Program (IEP), the LEA should still be required to provide a free appropriate public education (FAPE). ○ 1 comment from the Virginia Coalition supports maintaining current regulation 8 VAC 20-80-70 E.4.c: “Parental consent is not required before administration of a test or other evaluation is used to measure...and is included in the IEP”. ○ 2 comments from the Virginia Coalition support maintaining requirements regarding LEAs’ reasonable measures to obtain parental consent and the documentation of those efforts. ○ 1 comment from the Virginia Coalition supports clarifying that parents have the right to revoke consent. 	<ul style="list-style-type: none"> ➤ In order to limit unnecessary requirements while also protecting the rights of parents and children, the Board of Education eliminated the consent requirement for partial or complete termination of services.
<p>Exceeding Federal Regulations - 142 comments</p> <ul style="list-style-type: none"> ○ 96 comments from special education administrators, 42 comments from other LEA personnel and 3 comments from VCASE support not exceeding federal regulations. ○ 1 comment from the Virginia Coalition indicated the need to exceed federal regulations. 	<ul style="list-style-type: none"> ➤ In order to limit unnecessary requirements while also protecting the rights of parents and children, the Board of Education limited requirements in excess of those required by federal regulations.

*Institute of Higher Education (IHE), Just Children (JC), Learning Disabilities Association of Virginia (LDAV), Local Educational Agency (LEA), Parent Educational Advocacy Training Center (PEATC), State Special Education Advisory Committee (SSEAC), Training and Technical Assistance Center (T/TAC), Virginia Coalition of Students with Disabilities (Virginia Coalition), Virginia Council of Administrators of Special Education (VCASE)

<p>Local Advisory Committees (8 VAC 20-80-90 E.) - 138 comments</p> <ul style="list-style-type: none"> ○ 40 comments from LEA personnel support eliminating requirement for local advisory committees (LACs). ○ 16 comments from parents, 3 comments from citizens, and 1 comment each from an IHE, an advocate, Just Children, an LEA employee, and the SSEAC support the continued requirement for LACs. ○ 36 comments from LEA personnel and 1 comment from VCASE support the need for balanced representation by varied disabilities. ○ 36 comments from LEA personnel and 1 comment from VCASE support including school personnel as voting members of LACs. 	<ul style="list-style-type: none"> ➤ Due to the long-standing requirement for local advisory committees and a history of their contributions, the Board of Education maintained a requirement for local advisory committees that reflect membership diversity and flexibility.
<p>IEP Content (8 VAC 20-80-62 F.) - 129 comments</p> <ul style="list-style-type: none"> ○ 15 comments from parents, 1 comment each from an advocate, a citizen, an IHE, LDAH, PEATC, the Virginia Coalition and the SSEAC support the requirement for short-term objectives or benchmarks for all IEPs. ○ 80 comments from LEA personnel and 1 comment each from VCASE and a citizen support the use of short-term objectives only for students participating in alternate assessments. ○ 14 comments from parents, 1 comment each from an advocate, an IHE, Just Children, and SSEAC support providing IEP progress reports at the same intervals used for students without disabilities. ○ 1 comment each from LDAH and a citizen support including timelines and specific data for measuring student's progress toward annual goals. ○ 1 comment from the Virginia Coalition suggested a revision to current IEP content to include addressing the federal requirement for services based on peer-reviewed research in order to ensure that the child's education will be improved by using methods tested and proven to work. ○ 1 comment from Just Children suggested adding a provision that would clarify that IEPs can (and should) contain specific instructional methodologies when necessary for a child to receive FAPE. ○ 1 comment each from the Virginia Coalition and Just Children expressed support for requiring that both academic and functional performance be reflected in the Present Level of Performance. ○ 1 comment from PEATC indicated a need to clarify that measurable goals are to address progress in the general curriculum and meet other educational needs, and should be based on standardized measurement criteria, including peer-reviewed research, if possible, or contain interim measures of progress to hold schools accountable. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to IEP content required by federal regulations.
<p>Timeline - Evaluation/Eligibility (8 VAC 20-80-54 H.) - 112 comments</p> <ul style="list-style-type: none"> ○ 88 comments from LEA personnel, 14 comments from parents, and 1 comment each from VCASE, SSEAC, an IHE, Just Children, and an advocate supported the continued use of the 65 day timeline. ○ 1 comment each from an advocate, the Virginia Coalition and PEATC supported the use of the federal default 60 calendar day timeline. ○ 2 comments from LEA personnel supported clarification of the triggering event for the timeline (i.e., receipt by the central office, child study committee, or building level staff). 	<ul style="list-style-type: none"> ➤ Virginia has a long-standing 65 day timeline for which there was support from public comment. The Board of Education maintained the 65 day timeline in the draft regulations for initial evaluations, but clarified that the 65 day timeline for an initial evaluation is triggered by the date of parental consent for the evaluation.
<p>Discipline – Functional Behavioral Assessments (FBAs) & Behavioral Intervention Plans (BIPs) (8 VAC 20-80-68 C. 2. d.) - 107 comments</p> <ul style="list-style-type: none"> ○ 82 comments from LEA personnel and 1 comment from VCASE supported deleting 11th day requirements. ○ 15 comments from parents, 3 comments from the Virginia Coalition, and 1 comment each from an advocate, an IHE, Just Children, SSEAC, PEATC and a school social worker supported restoring 11th day requirements. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to discipline required by federal regulations. The 11th day requirement was not included.

<p>Eligibility – Specific Learning Disabilities (SLD) (8 VAC 20-80-56 C. 7. & G.) - 91 comments</p> <ul style="list-style-type: none"> ○ 76 comments from LEA personnel, 1 comment each from VCASE and the Virginia Coalition supported the use of a response-to-intervention (RTI) approach with no requirement in the regulations for severe discrepancy. ○ 4 comments from the Virginia Coalition supported the inclusion of federal language regarding SLD eligibility determinations. ○ 2 comments from LDAV, 2 comments from citizens, and 1 comment each from an LEA representative and a parent supported the development of state criteria for identification, 1 of which suggested alternative discrepancy criteria if the discrepancy model is used. ○ 1 comment each from LDAV and a citizen indicated the need for guidelines and training for response-to-intervention. ○ 1 comment from LDAV indicated that LEAs be required to inform parents in writing and be involved in an RTI process when students receive intervention more than is common in general education setting. 	<ul style="list-style-type: none"> ➤ To provide maximum flexibility to local educational agencies while also providing additional guidance on the determination of eligibility for special education and related services, the draft regulations allow response-to-intervention as well as other criteria such as severe discrepancy.
<p>Evaluations for post-secondary program admission - 84 comments</p> <ul style="list-style-type: none"> ○ 83 comments from LEA personnel and 1 comment from VCASE agreed that schools not be required to conduct evaluations for entrance requirements for vocational rehabilitation programs, colleges or other postsecondary settings. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the draft regulations specifically indicate that schools are not required to provide post-secondary program admission evaluations.
<p>Accountability for Instruction - 83 comments</p> <ul style="list-style-type: none"> ○ 38 comments from LEA representatives commented on the tension between the emphasis on academics and the need for IEP teams to have flexibility to develop an educational plan to meet the needs of students – especially for students with moderate to severe disabilities who need functional skills taught. ○ 38 comments from LEA representatives indicated that instructional accountability lies in the realm of general education – not special education. ○ 2 comments from parents and 1 comment each from a Part C representative and an LEA representative indicated the need for additional curriculum options other than SOL requirements for students with disabilities. ○ 2 comments from parents supported off-level testing to measure student progress. ○ 1 comment from a parent indicated that requirements for a standard diploma need to be changed to allow students with disabilities to graduate with a standard diploma without verified credits stating that Modified Standard Diploma or Special Diploma is not sufficient for entry into postsecondary settings. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions required. As such, testing for accountability is designed in compliance with federal NCLB requirements, and local accountability for achievement is the responsibility of the local educational agency.
<p>Private Schools (8 VAC 20-80-66) - 82 comments</p> <ul style="list-style-type: none"> ○ 78 comments from LEA representatives indicated the need for clarification of responsibilities and distinctions for preschool children and school-age children placed in private schools, and those placed through CSA. ○ 2 comments from PEATC suggested that: <ul style="list-style-type: none"> • language should be included that clarifies that parents who decline special education services and place their child in a private preschool would be considered to be parentally placed since private preschools are not necessarily providing elementary education. • regulations should specify that if the parent of a child privately placed outside his home LEA would like to enroll the child in the home LEA, the home LEA would be responsible for evaluating the child. ○ 1 comment from a parent supported promoting access to private schools for students with disabilities. ○ 1 comment from the Virginia Coalition supports maintaining all provisions related to private school placement by IEP teams in 8 VAC 20-80-66 A. 	<ul style="list-style-type: none"> ➤ The proposed regulations include only the regulatory language required by the federal regulations with respect to private schools.

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<p>Transition Age (8 VAC 20-80-62 F. 9. & 10.) - 81 comments</p> <ul style="list-style-type: none"> ○ 14 comments from parents, 4 comments from IHEs, 4 comments from LEA representatives, 2 comments from T/TACs, 2 comments from citizens, and 1 comment each from a VDOE staff, LDAV, an advocate, a private school representative, a vocational rehabilitation counselor, the Virginia Coalition, and the SSEAC supported the continuation of age 14 for transition services in IEPs. ○ 45 comments from LEA representatives and 1 comment from VCASE supported the use of age 16 for required transition services in IEPs. ○ 1 comment from Just Children supported the use of transition services beginning in 9th grade for students who are not slated to graduate with a standard or advanced diploma. ○ 1 comment from PEATC which suggested the need for clarification of which transition activities occur at which age. 	<ul style="list-style-type: none"> ➤ Despite the desire to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education maintained the age 14 requirement for transition based on the need to ensure that students with disabilities meet certain transition expectations upon their graduation or exit from public schools.
<p>Due Process Procedures (8 VAC 20-80-76) - 72 comments</p> <ul style="list-style-type: none"> ○ 43 comments from LEA representatives and 1 comment from VCASE opposed non-attorney representation of parties and supported the requirement that parties be represented at their own expense by attorneys. ○ 21 comments from the Virginia Coalition recommended a number of revisions to the due process procedures including alignment with federal requirements, which would impact initial pleadings and their amendments, statute of limitations, administration of oaths, hearing officer qualifications and responsibilities, exchange of evidence, applicable timelines and their extensions, recovery of attorney fees for LEAs, expedited disciplinary hearings, and appeal procedures. ○ 1 comment each from a Part C provider and a parent supported making the due process system free to parents such as payment to witnesses. ○ 1 comment from a parent suggested requiring LEAs to provide information requested in a timely manner or have related testimony by the LEA contradicted. ○ 2 comments from a parent recommended: <ul style="list-style-type: none"> ▪ requiring that hearing officers know the regulations before they hear a case, and ▪ requiring an equal number of hearing officers with experience representing students as those having experience representing schools. ○ 2 comments from the Virginia Coalition suggested: <ul style="list-style-type: none"> ▪ retention of the provision requiring VDOE to share information on the qualifications of hearing officers with parents and school divisions, upon request, and allowing either party to object to the appointment based on conflict of interest; and ▪ exclusion of people who are employees of elementary and secondary school-related organizations as hearing officers. 	<ul style="list-style-type: none"> ➤ The draft regulations provide for all rights guaranteed by IDEA and the federal Part B regulations with respect to due process hearings. To minimize state regulations that exceed the federal requirements, responsibility for the implementation of the due process hearing system has been shifted exclusively to VDOE, rather than the responsibilities being shared, in part, with the Supreme Court of Virginia. VDOE's responsibilities include the establishment of procedures to ensure compliance with federal due process requirements, while maintaining an effective and efficient due process system.

<p>Least Restrictive Environment (8 VAC 20-80-64) - 70 comments</p> <ul style="list-style-type: none"> ○ 47 comments from LEA representatives and 1 comment from VCASE supported distinguishing between placement and location, thus allowing the LEA to determine site/location of services. ○ 15 comments from parents, 2 comments from Just Children, and 1 comment each from PEATC, an advocate, an IHE, and SSEAC commented that regulations need to clarify the process and requirements related to placements in the least restrictive environment (LRE) to inform parents about their rights and ability to make appropriate decisions concerning opportunities in the general education curriculum. ○ 1 comment from a parent indicated the need for a guarantee that all children with an IEP be given the option to participate 25-100% of class in instruction in an inclusive environment. 	<ul style="list-style-type: none"> ➤ The 4th Circuit decision of May 2007 (<i>A.K. vs Alexandria</i>; currently on appeal) suggests that school divisions may not be able to distinguish location from placement. Other LRE requirements are limited to those included in the federal regulations.
<p>Mediation (8 VAC 20-80-74) - 47 comments</p> <ul style="list-style-type: none"> ○ 42 comments from LEA representatives and 1 comment from VCASE supported requiring parties to sign a confidentiality pledge to ensure that decisions during the mediation remain confidential, irrespective of the mediation results. ○ 1 comment from Just Children supported allowing mediators to attend school meetings subsequent to mediation to serve as a facilitator of the agreement reached. ○ 1 comment from the Virginia Coalition indicated that 8 VAC 20-80-74 F.1. should be maintained, thus not allowing an employee of any LEA or VDOE to serve as a mediator if providing direct services to a child who is the subject of the mediation process. ○ 1 comment from the Virginia Coalition supported retaining the requirement that mediation be held in a timely manner and at a location convenient to both parties and that content of the mediation agreement comport with federal requirements, including who signs the agreement, that discussions be confidential, and that it may not be used as evidence in subsequent due process of civil proceedings and that they contain a pledge to that effect, and that agreements are enforceable in any State/district court of competent jurisdiction. ○ 1 comment from the Virginia Coalition supported the availability of mediation at all stages of the process – not just for due process. 	<ul style="list-style-type: none"> ➤ The draft regulations include a system of mediation as required by Part B federal regulations that uses mediators to meet with disputants to work toward an agreement in a confidential setting. It does not include additional responsibilities for mediators such as attendance at IEP meetings. Mediation may be used at any time during the special education process.
<p>Eligibility -- Developmental Delay (8 VAC 20-80-56 F.) – 46 comments</p> <ul style="list-style-type: none"> ○ 42 comments from LEA representatives and 1 comment from VCASE supported the use of developmental delay only for the 2-5 age range. ○ 1 comment each from an LEA representative, the Virginia Coalition and PEATC supported the continued use of developmental delay for students from 2-5 and from 5-9. 	<ul style="list-style-type: none"> ➤ Based on support from public comment, the Board of Education included only those children from 2-5 as eligible for a developmental delay classification. Preschoolers who need special education and related services may be eligible using this identification prior to meeting the criteria for other disability areas.
<p>Paperwork Reduction - 40 comments</p> <ul style="list-style-type: none"> ○ 40 comments from LEA representatives stressed the importance of reducing paperwork 	<ul style="list-style-type: none"> ➤ The Board of Education minimized the paperwork wherever possible by limiting regulations, where appropriate, to only those federally required.
<p>Response to Intervention [other than SLD Eligibility] - 39 comments</p> <ul style="list-style-type: none"> ○ 38 comments from LEA representatives indicated that a requirement for response-to-intervention will result in a fiscal impact requiring restructuring, professional development, and additional staff to implement. ○ 1 comment from PEATC supported the development of criteria for RTI and other early intervening services. 	<ul style="list-style-type: none"> ➤ The Board of Education included response to intervention as one of the possible ways to document a disability based on the federal regulations and the support from literature and research.

<p>Definitions - [See below for each specific term in alphabetical order] (8 VAC 20-80-10) – 29 comments</p> <p><u>Change in Placement</u> - 2 comments</p> <ul style="list-style-type: none"> 1 comment each from Just Children and the Virginia Coalition suggested adding the language, “any change in setting for a student receiving special education that does not replicate all elements of the educational program of the student’s previous setting” based on <i>A.W. v Fairfax County School Board</i>, 372 F. 3d 674,682 (4th Circuit). The Virginia Coalition suggested maintaining the current triggers for a change in placement, and Just Children suggested including, “a series of short-term suspensions totaling more than 10 cumulative days and that constitute a pattern as defined in this chapter” to be consistent with federal language and with state manifestation language. <p><u>Child with a Disability</u> - 1 comment</p> <ul style="list-style-type: none"> 1 comment from an LEA representative supported recognizing “deaf-blind” as a disability separate from others. <p><u>Consent</u> – 2 comments</p> <ul style="list-style-type: none"> 1 comment from PEATC suggested the need to clarify the meaning of “informed consent.” 1 comment from PEATC suggested not using “consent” and “agreement” since they mean similar things. It was suggested that only “parental consent” be used. <p><u>Educational Performance</u> – 2 comments</p> <ul style="list-style-type: none"> 1 comment each from Just Children and the Virginia Coalition supported defining educational performance as “all aspects of a child’s performance in school including academic achievement, performance on benchmarks and other achievement tests, as well as functional performance.” <p><u>Emotionally disturbed</u> – 2 comments</p> <ul style="list-style-type: none"> 1 comment each from PEATC and an LEA representative suggested changing the term “emotionally disturbed” to “emotional disability”. <p><u>Evaluation</u> – 1 comment</p> <ul style="list-style-type: none"> 1 comment from the Virginia Coalition suggested including definitions for both evaluation and assessment to clarify the ambiguity. <p><u>Functional Behavior Assessment</u> - 1 comment</p> <ul style="list-style-type: none"> 1 comment from the Virginia Coalition supported clarifying that an FBA is an evaluation, allowing parents to obtain an Independent Educational Evaluation (IEE) when they disagree. <p><u>Mental retardation</u> – 1 comment</p> <ul style="list-style-type: none"> 1 comment from PEATC suggested changing “mental retardation” to “intellectual disability”. <p><u>Other Health Impaired</u> – 1 comment</p> <ul style="list-style-type: none"> 1 comment from PEATC suggested including Tourette Syndrome in the definition for Other Health Impaired. <p><u>Parent</u> – 5 comments</p> <ul style="list-style-type: none"> 1 comment each from the Virginia Coalition, Just Children, and a Parent Resource Center supported additional language that would allow foster parents to serve as the parent for purposes of special education in specific instances and not require a surrogate. 1 comment from PEATC recommended adding language that would define the rights of parents in joint custody situations when the parents disagree with regard to consent requirements. 1 comment from a Parent Resource Center indicated the need to clarify requirements regarding social worker service providers acting as a parent for students in their care. <p><u>Related Services</u> – 7 comments</p> <ul style="list-style-type: none"> 1 comment from a parent, 2 comments from citizens, and 2 comments from LEA representatives support adding “interveners” in the definition of interpreters to provide an alternative to interpreters for deaf-blind students since interveners are successful in promoting educational progress. 	<ul style="list-style-type: none"> ➤ Terms and definitions used in the draft regulations were based on language from the federal Part B regulations, other state or federal regulations, or were developed to clarify, as necessary, certain aspects required by the federal regulations such as the term, “parent.” ➤ Criteria were included in the eligibility section of these draft regulations for certain disability categories to assist in clarifying which students are eligible under these categories.
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<ul style="list-style-type: none"> 1 comment from a Parent Resource Center suggested maintaining the current definition rather than adding additional services, but suggested noting that the list is not exhaustive; also suggested developing a separate training guide. 1 comment from a parent indicated that the exception for surgically implanted devices is very broad and could provide an excuse to refuse a child admission to school due to responsibilities associated with some devices. <p><u>Supplementary Aids and Services</u> – 2 comments</p> <ul style="list-style-type: none"> 1 comment each from Just Children and the Virginia Coalition supported including a non-exhaustive list as guidance to schools and parents on the types of aides and services that may be provided. <p><u>Transition Services</u> - 2 comments</p> <ul style="list-style-type: none"> 1 comment each from Just Children and the Virginia Coalition supported the addition of language to comport with federal regulations including examples to provide clarity. 	
<p>Foreword Content – 17 comments</p> <ul style="list-style-type: none"> 14 comments from parents, and 1 comment each from SSEAC, an advocate, and an IHE indicated that the language in the Foreword needs to be expanded to include the intent of “high expectations” and “educating children in the regular classroom to the maximum extent possible . . . prepared to lead productive and independent adult lives, to the maximum extent possible.” 	<ul style="list-style-type: none"> The following language was included in the Foreword from 34 CFR § 300.199 to indicate expectations; “This federal regulation also requires that State rules, regulations, and policies under the IDEA '04 must support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student achievement standards.”
<p>Discipline - Long Term Removals General (8 VAC 20-80-68 C.) – 14 comments</p> <ul style="list-style-type: none"> 10 comments from the Virginia Coalition supported: <ul style="list-style-type: none"> revisions to define “substantially similar” to include behaviors caused by the child’s disability or had a direct and substantial relationship to it since behaviors may not appear similar but are substantially similar due to the disability; retention of current factors for determining whether or not the LEA has demonstrated a “substantial likelihood” that a child will injure himself or others if not removed to an IAES placement for up to 45 days); retention of the requirement to provide services for any subsequent removals after 10 cumulative days to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of the student’s IEP with an addition that would include the provision of FAPE; requiring that a child receive educational services on the 11th cumulative day of removal; retention of language that requires that the special education teacher be consulted regarding service determinations for removals that exceed 10 days in a school year; retention of the current requirement for an IEP team to determine the IAES so as to enable the student to continue to progress in the general curriculum, continue to receive services and modifications to enable the student to meet IEP goals, and include services and modification to address the behavior and designed to prevent the behavior from recurring; that for disciplinary purposes, the definition of “serious bodily injury” be the same as the federal definition and not allow removal for a lesser injury; adding a provision which requires the following: If a parent does not know how to write or has a disability that prevents a written statement, the LEA must provide personnel and services to enable the parent to express in writing his/her concerns that a child is in need of special education and related services; and information regarding this service must be provided to all parents to protect all children “who are not yet eligible” during disciplinary proceedings; clarifying that a finding of ineligibility based on an evaluation that is more than 3 years old cannot be the basis for finding the school district is not deemed to know a child has a disability; and clarifying the ability of the LEA to consider unique circumstances in deciding on a case-by-case basis to remove a child from the classroom. 1 comment from Just Children supported the inclusion of language providing 	<ul style="list-style-type: none"> In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to long-term removals required by federal regulations.

<p>guidance that in-school and bus suspensions count toward 10 cumulative days of suspensions constituting a pattern.</p> <ul style="list-style-type: none"> • 2 comments from PEATC supported that the regulations should clarify <ul style="list-style-type: none"> ○ that students with disabilities cannot be suspended/expelled for code-of-conduct behavior related to disability; and ○ that any alternative placement, including home-based instruction, needs to be sufficient for students to make progress in the general curriculum. • 1 comment from a parent suggested retention of current requirements for “stay-put” that allow children to remain in school pending a manifestation determination. 	
<p>Due Process - Resolution Session – 14 comments</p> <ul style="list-style-type: none"> • 1 comment each from SSEAC, Just Children, and the Virginia Coalition suggested that all discussions in resolution meetings be required to be confidential by inserting language similar to that in the mediation provisions. • 1 comment each from the Virginia Coalition and SSEAC suggested that LEAs and parents need to decide collaboratively on participants for the resolution session. • 9 comments from the Virginia Coalition indicated: <ul style="list-style-type: none"> ○ that regulations should allow parents to bring advocates and others with special knowledge of the child to the resolution meeting. ○ that parents should be permitted to seek a hearing officer determination as to whether the parents participated in a resolution session or not, thus allowing the due process to proceed if the hearing officer determines that the parent participated; feels that current requirement would rely on the LEA to determine whether the parent participated. ○ that a new resolution session should not be required if parties amend their complaint in response to a finding of insufficiency. ○ that it should be required that if the LEA fails to convene the resolution session within 15 days with the required personnel, parents may seek a ruling from the hearing officer within 3 days to start the 45-day due process timeline. ○ that the regulations include that all LEAs be required to make all reasonable efforts to schedule the resolution session at a mutually agreed-upon time and place and contact the parents within five days of receiving the complaint to schedule the meeting. ○ the need to initiate the 45 day due process timeline (and not wait the 30 days) if the parties waive the resolution session or an agreement cannot be reached. ○ concerns that the LEA could use the resolution session to prevent due process and that LEAs would be required to use the resolution session only for bona fide attempts to resolve the complaint. ○ expressing the need in 2 comments for LEAs to use alternative means to ensure parental participation in resolution sessions such as letters, telephone calls, or videoconferencing subject to the parent’s agreement. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to due process resolution sessions required by federal regulations.
<p>IEP Process – 14 comments</p> <ul style="list-style-type: none"> ○ 1 comment from PEATC indicated that consensus should be defined as unanimity. ○ 7 comments from the Virginia Coalition supported: <ul style="list-style-type: none"> ▪ Retaining current regulations regarding IEP team consensus. ▪ Continued regulations requiring that the IEP team works toward consensus and that the IEP team provides specific guidance regarding the prior notice if consensus cannot be reached. ▪ Retention of current language regarding accommodations even though federal regulations only address program modifications or supplementary aids and services. ▪ Including language to emphasize the use of positive behavioral interventions. ▪ The required involvement of the regular education teacher to address challenging behaviors based on the use of evaluation tools and the full range of behavioral assistance that may be necessary including supports as well as interventions. ▪ The need for IEP teams to continue to consider state and division-wide assessments and add that they must consider “the academic, developmental, and functional needs of the child.” ▪ Revising the Notice of Meeting requirements to indicate when a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student as required by federal regulation § 300.322(b)(2)(i)(A). ○ 1 comment each from a parent and PEATC supported the continued right to audio record meetings. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education limited wherever appropriate those provisions pertaining to the IEP process to only those required by federal regulations.

<ul style="list-style-type: none"> o 3 comments from Just Children suggested: <ul style="list-style-type: none"> ▪ adding a requirement for school divisions to notify parents of their right to reschedule IEP meetings. ▪ requiring that parents be provided with copies of any IEP, including revised or amended IEPs. ▪ including language to require that IEPs be implemented as soon as possible but not more than 10 calendar days after the IEP was developed or revised – with emphasis on the revised since current language does not address revisions. o 1 comment from a parent suggested including clear guidance on convening an IEP meeting upon parental request, including a time table. 	
<p>Discipline – Manifestation Determination Review (MDR) (8 VAC 20-80-68 C. 5.) – 11 comments</p> <ul style="list-style-type: none"> o 1 comment from Just Children suggested requiring the staff member who reported the conduct in question to attend the MDR meeting. o 1 comment from Just Children indicated that MDR teams should be required to document the reasons for their answers to each question they must address. o 1 comment each from Just Children and the Virginia Coalition favored maintaining current requirements for determining when a behavior is a manifestation of a disability in addition to the standards required by IDEA 2004. o 1 comment from Just Children supported requiring MDR meetings to be recorded upon parent request. o 6 comments from the Virginia Coalition supported: <ul style="list-style-type: none"> ▪ a requirement for IEP teams to review positive behavioral strategies and develop an appropriate BIP after an FBA even if the behavior is not a manifestation of the disability. ▪ a requirement for LEAs to work with parents to select members of the MDR team and allow the parents or LEA the discretion to include all individuals with special knowledge or expertise regarding the child, particularly how the disability can impact behavior or understanding and the impact/consequence. ▪ revision(s) to the regulations to indicate that a child’s educational placement can be changed only by parental consent unless the LEA meets the requirements included in current regulations that would allow an interim alternative education setting (IAES). ▪ the need to modify current regulations to require that FBA/BIP be required when the behavior is a manifestation of the disability. ▪ that the review of “all relevant information in the child’s file” includes all education records of the child as well as new information the parent/LEA has. ▪ that the behavior be determined to have a “direct and substantial relationship to the disability” if the disability significantly impairs the child’s behavioral controls (Doe v. Maher, 793 F.2d 1470 - 9th Circuit, 1986). 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to discipline and manifestation determination reviews required by federal regulations.
<p>IEP Team Membership (8 VAC 20-80-62 C.) – 11 comments</p> <ul style="list-style-type: none"> o 1 comment from Lдав and 1 comment from a citizen supported a provision requiring that excusal of IEP team members be in writing and presented to the parent at least one day before the IEP meeting. o 1 comment from the Virginia Coalition opposed allowing IEP team members to be excused with parent consent. o 1 comment from Just Children supported requiring that a request be made to excuse a team member within a reasonable time prior to the meeting, thus allowing some flexibility in case of emergencies, but expecting that in most cases this request be made at least a day or two in advance. o 1 comment from PEATC supported specifying that the LEA representative have the authority to bind the LEA to an agreement reached at an IEP meeting. o 1 comment from PEATC indicated the need to specify whether a parental consent is required if a member presents their report and leaves. o 1 comment from PEATC indicated the need for a clarification that IEP team members whose areas are being discussed be required members. o 1 comment from a parent indicated the need for a provision that would not restrict individuals or friends that would like to attend IEP meetings with parents. o 2 comments from the Virginia Coalition addressed secondary transition IEP team needs and indicated the need to: <ul style="list-style-type: none"> ▪ Require that the student with a disability be invited to his/her IEP meeting if the purpose of the meeting will be consideration of postsecondary goals and transition services needed to reach those goals. ▪ Require, with the consent of the parent or child who has reached the age of 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions required by the federal regulations with respect to IEP team membership.

<p>majority, that a representative of another agency that is likely to be responsible for providing or paying for transition services be invited, and take other steps to obtain the participation of the other agency if they do not attend.</p> <ul style="list-style-type: none"> o 1 comment from the Virginia Coalition indicated the need to add a provision for students transitioning from Part C to Part B that would require an LEA to invite, at the request of the parent, the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. 	
<p>Eligibility -- General Procedures (8 VAC 20-80-56 C.1. C.6, D-E., H.-J.) – 10 comments</p> <ul style="list-style-type: none"> o 3 comments from the Virginia Coalition supported maintaining current regulations regarding the following: <ul style="list-style-type: none"> • Provide procedural safeguards in determining eligibility and insuring confidentiality of records. • The group making the decision work toward consensus and obtain parental consent for initial eligibility and any change in identification. • The group have a written summary consisting of the basis for its determination and signed by each group member present. • The LEA provide a copy of the documentation of the decision to the parent(s). • The group forward a summary of the group’s essential deliberations to the IEP team. • Not requiring that children be identified by their disability. • Providing relevant information to teachers of students who are not found eligible. o 1 comment from PEATC indicated that children should not have to wait to fail in order to be found eligible. o 1 comment from PEATC indicated that students with limited English proficiency should not be denied access to special education. o 1 comment each from SSEAC and Just Children indicated the need to add language that would ensure that students who may be performing well academically but whose disabilities affect them in other ways (such as socially, behaviorally, or otherwise functionally) receive special education and FAPE. o 2 comments from Just Children suggested: <ul style="list-style-type: none"> • that eligibility committees be required to review reports on a child’s functional performance in school when interpreting evaluations since federal regulations now require that IEPs address both academic and functional performance. • that remediation be required in accordance with the Standards of Quality (SOQ) if students are found not eligible due to inadequate instruction in math or reading or are limited English proficient. o 1 comment from a parent suggested that guidance/criteria be provided for identifying students with high functioning Asperger’s or Autism and nonverbal learning disabilities. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those eligibility procedures required by the federal regulations.
<p>Transition – General – 8 comments</p> <ul style="list-style-type: none"> o 1 comment from a parent suggested that schools be held accountable for transition plans and require schools to develop, with the student, a final report for each IEP student as they exit high school; also provide training/marketing for school administrators and teachers on the transition plan along with materials to be provided to families to assist with monitoring school transition plans for compliance. o 1 comment from the Virginia Coalition suggested revising regulations to include language specifying that postsecondary goals based on transition assessments be included in the IEP for students turning 16 and that transition services be included to assist the student in reaching the postsecondary goals. o 1 comment from a T/TAC suggested emphasizing training and continuity with the summary of performance. o 1 comment from PEATC suggested that students who leave special education without a diploma receive a summary of performance based on current evaluation that will be useful to document the disability for accessing accommodations, services, and programs included in the transition plan. o 1 comment each from an IHE and a T/TAC indicated the importance of evaluations to the transition process. o 1 comment each from LDAV and a citizen suggested that the required summary of academic achievement and functional performance include enough documentation to assist in successful transition to postsecondary education or employment. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education, with one exception, included only those provisions pertaining to transition requirements that are required by federal regulations. To ensure that students with disabilities meet certain transition expectations, the LEA’s responsibilities for completing a summary of academic achievement and functional performance for a child who exits without a standard or advanced diploma, and then later returns to school, was added.

<p>Evaluations - General (8 VAC 20-80-52 and 8 VAC 20-80-54) – 6 comments</p> <ul style="list-style-type: none"> ○ 1 comment from Just Children supported retention of language that allows referrals from any source in either oral or written form but suggested adding language to clarify that interventions cannot be implemented instead of conducting an evaluation. ○ 1 comment from the Virginia Coalition suggested retention of all current provisions for referral including child study committees to ensure a well-defined referral process. ○ 2 comments from SSEAC suggested: <ul style="list-style-type: none"> • clarifying the basis for referrals which includes functional performance and clarifying that educational performance means all aspects of a child’s performance in school, including but not limited to academic achievement, performance on benchmark and other tests, as well as functional performance; and • retention of current language that allows anyone to make a referral for a special education evaluation. ○ 1 comment from a special education administrator indicated that no changes are needed to the evaluation provisions. ○ 1 comment from a parent suggested that if the school division determines that no testing needs to be conducted for a triennial evaluation, that parents should be provided the option of having their child tested to assess progress on IEP goals using normed testing. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions required by the federal regulations with respect to referrals and evaluations for special education. Although the Child Study Committee requirement is a long-standing provision, the Board deleted the requirement for Child Study Committees to allow maximum flexibility for LEAs to develop their own procedures and timelines, including the use of research-based strategies and Response to Intervention.
<p>Procedural Safeguards - Parent Participation – 5 comments</p> <ul style="list-style-type: none"> ○ 4 comments from the Virginia Coalition supported: <ul style="list-style-type: none"> ▪ retention of current notice requirements to parents regarding meetings for identification, evaluation, and placement including notice early enough to ensure that they have an opportunity to participate. ▪ retention of the provision that states that meetings do not include informal conversations by LEA personnel if those issues are not addressed in the IEP. ▪ the addition of a requirement allowing parents to participate in IEP and placement meetings, including phone or video conferencing, and that placement decisions only be made without parents if the LEA has a record of attempts to involve the parents. ▪ retention of current requirement for LEAs to make reasonable efforts to ensure that parent(s) understand and are able to participate in any group discussions relating to the educational placement of their child, including arranging for an interpreter for a parent or parents with deafness, or whose native language is other than English. ○ 1 comment from a parent indicated that the time frame schools have to respond to parents should be shortened. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions required by the federal regulations with respect to procedural safeguards.
<p>Complaints Process (8 VAC 20-80-78) – 4 comments</p> <ul style="list-style-type: none"> ○ 2 comments from the Virginia Coalition encouraged: <ul style="list-style-type: none"> • maintaining the current provisions in the complaint process which outline the remedies available when VDOE finds a LEA failed to provide appropriate services. • the use of mediation but indicated the need to prohibit other forms of dispute resolution such as binding arbitration since private entities resolving complaints will not be subject to accountability. ○ 1 comment from Just Children supported maintaining exceptions to the one-year limitation period for bringing a complaint. ○ 1 comment from PEATC encouraged VDOE to accept and investigate complaints for 504 violations. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies that exceed federal requirements the Board of Education included those provisions required by the federal regulations with respect to complaint procedures. Remedies remain within VDOE’s authority. The Office of the Attorney General has advised VDOE that it has no authority to enforce Section 504.
<p>Procedural Safeguards Notice (8 VAC 20-80-70 D.) – 4 comments</p> <ul style="list-style-type: none"> ○ 1 comment from a parent indicated that the notice should include the rules/regulations regarding testing (i.e., consent, timelines, how parents receive test results). ○ 1 comment from the Virginia Coalition supported compliance with all requirements for providing procedural safeguards including a stipulation that placing a copy of the PSD on the internet is not a substitute for giving the notice to parents in hard copy. ○ 1 comment from Just Children supported the addition of a provision that would require that notices to parents inform them about their right to reschedule meetings. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to the

<ul style="list-style-type: none"> o 1 comment from PEATC suggested identifying PEATC in the procedural safeguards notice as Virginia's parent training and information center and a source for further information. 	<p>procedural safeguards required by federal regulations.</p>
<p>Staffing Requirements (8 VAC 20-80-45) – 4 comments</p> <ul style="list-style-type: none"> o 1 comment from an interpreter suggested that the interpreter qualifying test be changed for school interpreters to reflect classroom interpreting – suggested the use of Educational Interpreter Performance Assessment (EIPA). o 1 comment from an interpreter suggested adding to the sign language job description, “. . . when there is low or delayed learning, tutoring should be incorporated with interpreters duties when necessary.” o 1 comment from an LEA representative indicated a discrepancy between the requirement that public school teachers be “highly qualified” (HQ) and the specific exclusion that HQ requirements do not apply to private school teachers who are hired or contracted by an LEA to provide equitable services. This commenter questioned the ability of private school teachers to provide “equitable” services if not considered “highly qualified.” o 1 comment from a parent suggested that regular education teachers be trained in at least the basics of special education. 	<ul style="list-style-type: none"> ➤ Requirements were included in collaboration with the Department of Deaf and Hard of Hearing and require that interpreters pass both the written portions of the test and achieve a Level III status for performance. ➤ Requirements for “highly qualified” were included as required by Part B of the Act.
<p>Educational Records (8 VAC 20-80-70 G.) – 3 comments</p> <ul style="list-style-type: none"> o 1 comment from the Virginia Coalition suggested retention of current language related to Confidentiality of Information but also indicated a desire to require that copies of educational records be provided to parents at reasonable cost and amended to allow parents to have photocopies of their children’s records under all circumstances. o 1 comment each from LDAH and a citizen suggested that the regulations clarify that parental consent is not required for a school division to send student records to a receiving school and that failure to promptly respond to a request for records may result in a state complaint. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to educational records included in the federal regulations implementing Part B of the Act and FERPA.
<p>Independent Educational Evaluation (8 VAC 20-80-70 B.) – 3 comments</p> <ul style="list-style-type: none"> o 3 comments from the Virginia Coalition suggested: <ul style="list-style-type: none"> • that, with parental consent, experts be given the right to conduct an IEE to include, but not be limited to, classroom observations in accordance with local procedures and guidelines. Currently, some LEAs deny parent-chosen experts access to classroom observations. • that parents not be limited to one IEE in a child’s entire school year and that a school district may not use cost as a barrier to an IEE; and • that regulations be aligned to federal regulations (§ 300.502) to include the ability of parents to use an evaluation obtained at their expense at due process hearings if the parent shares the evaluation with the school division, and if a parent does not share the evaluation with the school division, it may not be used as evidence. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to independent educational evaluations required by federal regulations.
<p>Monitoring/Enforcement – 3 comments</p> <ul style="list-style-type: none"> o 1 comment from PEATC suggested that the regulations specify that students placed in special schools or on homebound instruction or students suspended or expelled be counted for the purposes of school report cards as a part of the home school child count. o 2 comments from a parent suggested: <ul style="list-style-type: none"> • punitive fines for principals and superintendents who do not comply with the IEP regulations; and • an annual audit or all school records be audited annually with noncompliance findings resulting in the loss of existing funding for typically developing students (similar to SOL funds). 	<ul style="list-style-type: none"> ➤ Monitoring and enforcement is a requirement of the federal regulations and a system is in place that conforms with federal requirements.
<p>Program/Service Specific comment – 3 comments</p>	

<ul style="list-style-type: none"> ○ 1 comment from a parent indicated that children should not be in a cross-category class and that there should be a wider range of specialized classes where individual disabilities may be addressed; mixing students makes it difficult for teachers and students according to this parent. ○ 1 comment from a parent indicated that related services should be relatively close to the main classroom without need to travel to other floors, out of the main building to trailers, or across parking lots. ○ 1 comment from a parent indicated that post-high school programs deserve further support and that it has provided a 21-year-old with Down Syndrome job skills and living skills. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations, and policies to which local educational agencies and schools are subject, the Board of Education maintained program standards to provide flexibility to schools to meet student needs.
<p>Surrogate Parents (8 VAC 20-80) – 3 comments</p> <ul style="list-style-type: none"> ○ 1 comment from the Virginia Coalition suggested that “natural parent” be changed to “biological or adoptive parent” and that a provision be added consistent with the definition of “parent” which would expand the list of those able to serve as a parent for purposes of special education and minimize the need for surrogate parents. ○ 1 comment from Just Children suggested that the regulations reflect an increased number of persons who now are deemed “parents” by the federal IDEA 2004 regulations, thus decreasing the circumstances in which LEAs have to go through the process of appointing surrogate parents. ○ 1 comment from SSEAC suggested that surrogate parents’ roles be defined and that the regulations include full definitions for other non-biological parents. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education, where appropriate, limited the provisions pertaining to surrogate parents to only those required by federal regulations. The definition of “parent”, however, is broadened and minimizes the number of students who will need a surrogate parent for special education.
<p>Transfer Students (8 VAC 20-80-56 K.) – 3 comments</p> <ul style="list-style-type: none"> ○ 1 comment from a school superintendent suggested the adoption of language which would require only consultation with the parent of a transfer student (either in-state or out-of-state) before providing “comparable” services. The current regulations require parental consent, exceeding federal regulations. ○ 1 comment from PEATC suggested adding language that would clarify that IEPs of students who transfer between the Department of Correctional Education and local school divisions would be implemented as well as clarify the requirements for transfer IEPs for children who are homeless or in foster care. ○ 1 comment from Just Children suggested retention of the requirement that the LEA in which a transfer student enrolls must immediately implement the most recent IEP for the child until the LEA determines whether to adopt the IEP, and if a child enrolls without a copy of the IEP, the child still receive FAPE immediately. 	<ul style="list-style-type: none"> ➤ This section, which was previously Virginia-specific, was revised in accordance with new federal requirements and guidance to ensure clarity, while minimizing the number of rules, regulations and policies to which local educational agencies and schools are subject.
<p>Age of Majority (8 VAC 20-80-72) – 2 comments</p> <ul style="list-style-type: none"> ○ 2 comments from PEATC suggested that: <ul style="list-style-type: none"> • protections be included for students who opt out of school before graduation to address their need to understand the repercussions of their decision and provide them with opportunities to receive special education services if they change their minds; and • parents be included as invited members of the IEP team, as appropriate, even though rights have been transferred to the student. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included all rights for students included in the federal regulations. Students who continue to be eligible and fall within the required ages of Part B of the Act but have reached the age of majority maintain the same protections that they had as minors.
<p>Child Find (8 VAC 20-80-50) – 2 comments</p> <ul style="list-style-type: none"> ○ 1 comment from Just Children suggested that language be added to the description of those children targeted in a child find campaign to include students who are performing well on academic tests or other measures of academic performance to ensure that these students are considered for evaluation for special education. ○ 1 comment from the Virginia Coalition suggested that the language be maintained which requires local school divisions to coordinate child find activities for infants and 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to Child Find

<p>toddlers, birth to age two, inclusive) with the Part C local interagency coordinating council.</p>	<p>required by the federal regulations, or the <i>Code of Virginia</i>. Transition requirements from Part C to Part B programs are included in these requirements.</p>
<p>Child Study Teams (8 VAC 2-80-50 C. 3.; 8 VAC 20-80-52) – 2 comments</p> <ul style="list-style-type: none"> ○ 1 comment from a special education administrator suggested clarification of procedures regarding parent requests for evaluations. ○ 1 comment from a special education administrator supports the continued use of child study teams as defined currently or a less structured process allowing greater flexibility. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to Child Find that were required by federal regulations or the <i>Code of Virginia</i>. As such, Child Study teams are not included in the draft regulations.
<p>Dispute Resolution – General (8 VAC 20-80-74; 8 VAC 20-80-76; 8 VAC 20-80-78) – 2 comments</p> <ul style="list-style-type: none"> ○ 1 comment from the Virginia Coalition suggested permitting a signed resolution agreement to be enforced through the Complaint Procedures as well as in state or federal court. ○ 1 comment from PEATC suggested clarifying that dispute resolution agreements should not forfeit the parent’s or student’s procedural safeguards rights, as in agreeing never to file another complaint for the same reason again. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to disputes which were necessary to implement the federal mandates.
<p>Early Intervening Services – 2 comments</p> <ul style="list-style-type: none"> ○ 1 comment each from a citizen and LDAH suggested that the regulations clarify that students with disabilities may benefit from early intervening services provided to students without disabilities and that early intervening services should include related services such as speech, psychological services, and counseling. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to early intervening services required by federal regulations.
<p>Eligibility Group Composition (8 VAC 20-80-56 B.) – 2 comments</p> <ul style="list-style-type: none"> ○ 1 comment from a special education administrator suggested that the same members should be able to serve on both eligibility and IEP teams. ○ 1 comment from the Virginia Coalition suggested changing the composition of the eligibility team to include the following for all eligibility teams (currently only required for SLD): <ul style="list-style-type: none"> • the child’s regular teacher (if the child does not have a regular teacher, one qualified to teach a child of that age or for a child less than school age, an individual qualified to teach a child of that age) and • at least one person qualified to conduct diagnostic examinations of children, such as a school psychologist or a speech-language pathologist. 	<ul style="list-style-type: none"> ➤ To ensure the accuracy and consistency of eligibility decisions, the composition required by the federal regulations for SLD determinations was expanded to apply to all eligibility groups, and to include LEA personnel representing the disciplines providing assessments, the special education administrator or designee.
<p>FAPE (8 VAC 20-80-60) – 2 comments</p> <ul style="list-style-type: none"> ○ 1 comment from a parent suggested that the exception of surgically implanted devices could make it difficult for some children with disabilities to attend school, unless that right is protected. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to

<ul style="list-style-type: none"> ○ 1 comment from an LEA representative suggested that parents should play a role and have responsibility along with schools to ensure students with disabilities have an equal opportunity to participate in nonacademic and extracurricular activities. 	<p>which local educational agencies and schools are subject, the Board of Education included all provisions from the federal regulations required for the provision of FAPE.</p>
<p>Use of Insurance (8 VAC 20-80-70 F.; 8 VAC 20-80-152) – 2 comments</p> <ul style="list-style-type: none"> ○ 2 comments from the Virginia Coalition supported state regulations that require parental consent before releasing educational records to both private and public insurance programs for billing in accordance with the Management of the Student’s Scholastic Record in the Public Schools of Virginia. Release of information to insurance companies should not have lesser protections than other third parties. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included all requirements from the federal regulations pertaining to the use of private or public insurance to pay for special education and related services.
<p>Parent Resource Center – 2 comments</p> <ul style="list-style-type: none"> ○ 1 comment from a parent suggested that the state provide funding for community-based Parent Resource Centers rather than school-based centers. ○ 1 comment from a parent suggested that local school divisions should be required to have Parent Resource Centers so parents can have someone other than LEA personnel explain their rights. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education did not include Parent Resource Centers as a requirement for localities despite its encouragement that localities consider having Parent Resource Centers.
<p>Preamble Content (Preamble) – 2 comments</p> <ul style="list-style-type: none"> ○ 2 comments from Just Children indicated: <ul style="list-style-type: none"> • language should be included to explain the policy and purpose of special education regulations so that users will understand the underlying premise using language more easily understood and accessible by non-attorneys. • that Article VIII of the Constitution is incorrectly identified as Article VII and that language quoted from VA Code § 22.1-214 is missing the words, “educate and.” 	<ul style="list-style-type: none"> ➤ The correction was made as noted that pertained to the <i>Code of Virginia</i>. Otherwise, the Preamble accurately reflects the purpose of the regulations.
<p>Age 2 Eligibility (8 VAC 20-80-30 1; 8 VAC 20-80-40 B.)</p> <ul style="list-style-type: none"> ○ 1 comment from the Virginia Coalition suggested maintaining the requirement to provide services to children with disabilities beginning at age two. 	<ul style="list-style-type: none"> ➤ The <i>Code of Virginia</i> currently requires special education from age 2, thus these draft regulations continue to require special education for children who are identified as eligible under these regulations from age 2 (with 2 defined as the student’s age by September 30 of a given year).
<p>Alignment with other state requirements</p> <ul style="list-style-type: none"> ○ 1 comment from SSEAC requested that the regulations align with other state requirements including the Comprehensive Services Act (CSA), and the Standards of Accreditation (SOA) particularly as they may apply to transition and diploma requirements. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education did not include additional regulations except as necessary to

	<p>clarify the link between these state requirements and other state special education requirements.</p>
<p>Annual Plan (8 VAC 20-80-90 A-C)</p> <ul style="list-style-type: none"> ○ 1 comment from a citizen supported that the annual plan report with the Flow through Funds Request should address the No Child Left Behind Act achievement gaps and be submitted by the LAC and signed by the Committee Chair. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those requirements for the annual plan which are required by federal regulations or the <i>Code of Virginia</i>.
<p>Assistive Technology (8 VAC 20-80-60 E.)</p> <ul style="list-style-type: none"> ○ 1 comment from a parent suggested use of all methods of Augmentative-Alternative Communication, including supported, typing or facilitated communication even if it not considered best practice. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions related to assistive technology required by federal regulations.
<p>Full Federal Funding</p> <ul style="list-style-type: none"> ○ 1 comment from an LEA representative indicated that full funding should be provided before any punitive actions are taken against school divisions for noncompliance. 	<ul style="list-style-type: none"> ➤ While the Board concurs with the desire for full funding for special education, the Board is required to monitor special education programs as detailed in federal regulations.
<p>Functions of VDOE and SSEAC (8 VAC 20-80-30 10.)</p> <ul style="list-style-type: none"> ○ 1 comment from the Virginia Coalition supported maintaining current provision related to the SSEAC through which the SSEAC "(a)dvise(s) the Virginia Department of Education on eligible children with disabilities in state, regional, or local adult or juvenile correctional facilities;..." 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies which exceed federal requirements, the Board of Education did not include this provision.
<p>Prior Written Notice (8 VAC 20-80-70 C.)</p> <ul style="list-style-type: none"> ○ 1 comment from the Virginia Coalition indicated that the regulations should specify the requirement to provide prior written notice "a reasonable time" before the LEA takes or declines to take action, as described in 20-80-70 C.1. If a due process hearing is being requested, the regulations should prohibit an LEA from delaying the notice until it receives a due process request unless it is not aware of the requested change until the due process notice is received. In all other situations, the LEA must give the notice at the time of the proposed/refused action. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, only federally required provisions related to Prior Written Notice are included in the draft regulations.
<p>Residency (8 VAC 20-80-40)</p> <ul style="list-style-type: none"> ○ 1 comment from SSEAC indicated the need to clarify the responsible LEA for IEP development and services for residents of group homes, including an emphasis on the continuation and non-interruption of FAPE when a child has moved to a group home and who bears responsibility in each type of situation (court placed, school placed, parentally placed). 	<ul style="list-style-type: none"> ➤ The Board revised the residency section in order to clarify the responsible LEA for children who are residents of group homes.

<p>Termination of Services (8 VAC 20-80-58)</p> <ul style="list-style-type: none"> ○ 1 comment from PEATC suggested clarifying that if a student drops out or is expelled, parents (or student age 18+) will receive notice of the right to an evaluation and special education services at the parent’s (or student’s age 18+) request. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education included only those provisions pertaining to termination of services required by federal regulations.
<p>Terminology Change</p> <ul style="list-style-type: none"> ○ 1 comment from the Virginia Coalition suggested replacing the term “general curriculum” with “general education curriculum,” thus reflecting that this is the same curriculum used with students without disabilities. 	<ul style="list-style-type: none"> ➤ The Board defined the term “general curriculum” in the draft regulations so as to clarify that general curriculum means the same curriculum for students without disabilities.
<p>Timeline - IEP Development (8 VAC 20-80-62 B. 2. b.)</p> <ul style="list-style-type: none"> ○ 1 comment from an LEA representative indicated that the timeline for IEP development should remain separate from the eligibility timeline and that 30 days from eligibility determination is reasonable. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education limited, where appropriate, those provisions pertaining to timelines to only those required by federal regulations.
<p>Timeline -- Initiate Reevaluation (8 VAC 20-80-54 H.2.)</p> <ul style="list-style-type: none"> ○ 1 comment from the Virginia Coalition suggested maintaining the current requirement to initiate a reevaluation no less than 65 business days prior to the third anniversary of the date eligibility was last determined. 	<ul style="list-style-type: none"> ➤ In order to respect the intent of Part B of the Act to minimize the number of rules, regulations and policies to which local educational agencies and schools are subject, the Board of Education deleted the timeline pertaining to reevaluations with the requirement that it be completed within 3 years.